

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



**IN THE MATTER OF DISPUTE
RESOLUTION ON THE PAYMENT
OF INCREMENTAL CURRENCY
EXCHANGE RATE ADJUSTMENT
(ICERA) AND GENERATION RATE
ADJUSTMENT MECHANISM
(GRAM) PURSUANT TO THE
DECISIONS OF THE ENERGY
REGULATORY COMMISSION
(ERC) ON THE FOLLOWING
CASES:**

**ICERA – ERC CASE NOS. 2010-
067 RC (16TH) AND 2010-073 RC
(17TH); AND**

**GRAM – ERC CASE NOS. 2008-
042 RC (10TH), 2008-053 RC (11TH),
2008-063 RC (12TH), 2009-032 RC
(13TH), 2009-056 RC (14TH), 2010-
003 RC (15TH), 2010-068 RC (16TH)
AND 2010-074 RC (17TH)**

D O C K E T E D
Date: AUG 04 2016
By: M

**BENGUET ELECTRIC
COOPERATIVE, INCORPORATED
(BENECO),**

- versus -

ERC CASE NO. 2015-046 MC

**TEAM (PHILIPPINES) ENERGY
CORPORATION (TPEC),
Respondent.**

x ----- x

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on June 19, 2015, Benguet Electric Cooperative, Incorporated (BENECO) filed a petition for dispute resolution against Team (Philippines) Energy Corporation (TPEC) for

the payment of Incremental Currency Exchange Rate Adjustment (ICERA) and Generation Rate Adjustment Mechanism (GRAM) pursuant to the Decisions on the following cases: ICERA – ERC Case Nos. 2010-067 RC (16th) AND 2010-073 RC (17th); and GRAM – ERC Case Nos. 2008-042 RC (10th), 2008-053 RC (11th), 2008-063 RC (12th), 2009-032 RC (13th), 2009-056 RC (14th), 2010-003 RC (15th), 2010-068 RC (16th) and 2010-074 RC (17th) (*copy hereto attached*).

In the said petition, BENEKO alleged, among others, that:

The Parties

1. Petitioner BENEKO is a duly registered electric cooperative under the National Electrification Administration (NEA) with a franchise to distribute electricity in Baguio City and the thirteen (13) Municipalities of Benguet, namely: Atok, Tublay, Buguias, Mankayan, Bakun, La Trinidad, Itogon, Tuba, Sablan, Kabayan, Kibungan, Kapangan and Bokod;
2. Respondent TPEC is an independent power producer (IPP) that is duly registered to conduct power generation in the Philippines;

Nature of the Petition

3. BENEKO seeks a ruling on the appropriate application of the Commission's Decisions on the cases that granted the prayer of the National Power Corporation (NPC) and the Power Sector Assets and Liabilities Management Corporation (PSALM) for the recovery of the incremental fuel and IPP costs under GRAM and for the recovery of the incremental cost on foreign currency exchange rate fluctuations under ICERA;
4. BENEKO has filed this action with urgency since its interpretation and application of the GRAM and ICERA Decisions have been contested by the TPEC, formerly Mirant (Philippines) Energy Corporation, with whom it has an existing Electric Power Purchase Agreement (EPPA). The said EPPA states that the electricity fee that BENEKO will pay TPEC will be based on the Time-of-Use

(TOU) rate of the NPC. The NPC rate includes the recovery of GRAM and ICERA;

The Controversy

5. BENEKO believes that cost adjustments sought to be recovered through GRAM and ICERA which were made part of the NPC generation rate paid by it can be recovered only for a definite period pursuant to the Commission's Decisions on GRAM and ICERA. TPEC, which bills BENEKO a generation cost that includes the ICERA and GRAM, says that the EPPA they signed clearly provided that GRAM and ICERA will remain as part of the electricity for as long as they remain as component parts of the NPC rate;
6. Since this conflict boils down to the clarification and proper interpretation of the Decisions on GRAM and ICERA promulgated by the Commission, BENEKO believes that the Commission has the appropriate jurisdiction;

The Facts

7. BENEKO and TPEC signed an EPPA on May 29, 2003. In the said EPPA, they agreed to peg the electricity fees to be paid by BENEKO to TPEC to the rates charged by the NPC. Schedule 7 of the EPPA defined the NPC rate as follows:

*"Effective NPC Cost applicable for the month as billed by the National Power Corporation (TRANSCO) as approved by ERC. **Includes Generation Charges (composed of Generation Cost, Franchise and Benefits to Host Communities Taxes and Foreign Exchange Rate Adjustment (FOREX) due to Generation Company (GENCO)), Transmission Delivery Charges (composed of Transmission and Sub-transmission Power Delivery Charges), Cross-Subsidy Charges (composed of Intra-Regional Grid Cross Subsidy Demand and Energy Charges), Ancillary Services Charges (composed of Load Following and Frequency Regulation, Spinning Reserve and Back-up Power Service Charges), System Operation Charge, and Supply***

Metering Charge and other adjustments that may be charged by NPC and TRANSCO. Expressed in PhP/kWh". A copy of the said EPPA is attached as Annex "B";

8. The Commission approved the aforementioned EPPA with modifications on June 20, 2008. Under ERC Case No. 2005-051 RC, the Commission sustained the electricity fee agreed in the EPPA. On page 12 of the Decision, the Commission said:

"NPC rate includes Basic Generation Charge (Average NPC TOU Rates to BENEKO), Franchise and Benefits to Host Communities Taxes, Power Act Reduction (PAR), Generation Rate Adjustment Mechanism (GRAM), and the Incremental Currency Exchange Rate Adjustment (ICERA) excluding Value Added Tax (VAT)." A copy of the said Decision is attached as Annex "C";

9. On January 17, 2005, BENEKO and TPEC entered into an Amendment of the Electric Power Purchase Agreement (Amended EPPA) which increased the capacity of electricity to be delivered to the former, from 15 MW to 55 MW. On December 1, 2009, the Commission issued an Order approving the increase in capacity and the Amended EPPA. Copies of the Amended EPPA and the Order are attached as Annexes "D" and "E";

10. On March 26, 2012, the Commission issued a Decision that granted the applications filed by the NPC and PSALM for the recovery of the Incremental Costs on Foreign Currency Exchange Rate Fluctuations under the 15th and 16th ICERA in ERC Case No. 2010-067-RC (15th) and ERC Case No. 2010-073-RC (16th). The dispositive portion of the Decision in both cases said:

"Wherefore, the foregoing premises considered, the applications filed by the NPC and PSALM for the recovery of their incremental costs on foreign currency exchange rate fluctuations under the ICERA (15th and 16th ICERA) are hereby approved with modifications.

Accordingly, NPC and PSALM are authorized to recover the following Deferred Accounting Adjustments (DAAs) on ICERA for Luzon, Visayas and Mindanao Grids effective their March 26, 2012 to April 25, 2012 billing period until the end of the corresponding recovery periods or until such time that the full amount shall have been recovered/refunded, whichever comes earlier:

<i>Grids</i>	<i>Rate (PhP/kWh)</i>	<i>Recovery Period (Months)</i>
<i>Luzon</i>	<i>0.3637</i>	<i>96</i>
<i>Visayas</i>	<i>0.1213</i>	<i>60</i>
<i>Mindanao</i>	<i>0.0094</i>	<i>36</i>

A copy of the said Decision is attached as Annex "F";

11. On the same date, the Commission, likewise, rendered its Decision granting the applications filed by the NPC and PSALM for the recovery of Incremental Fuel and Independent Power Producer (IPP) Costs under the GRAM in ERC Case Nos. 2008-042 RC (10th), 2008-053 RC (11th), 2008-063 RC (12th), 2009-032 RC (13th), 2009-056 RC (14th), 2010-003 RC (15th), 2010-068 RC (16th) and 2010-074 RC (17th). The dispositive portion states:

"Wherefore the foregoing premises considered, the applications filed by the National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) for the recovery of the incremental fuel and Independent Power Producer (IPP) costs under the Generation Rate Adjustment Mechanism (GRAM) are hereby APPROVED with modifications.

Accordingly, NPC and PSALM are authorized to recover the following Deferred Accounting Adjustments (DAAs) on GRAM for the Luzon, Visayas and Mindanao Grids effective their March 26, 2012 to April 25, 2012 billing period until the end of the corresponding recovery periods or until such time that the full amount shall have been recovered, whichever comes earlier.

<i>Grids</i>	<i>Rate (PhP/kWh)</i>	<i>Recovery Period (Months)</i>
<i>Luzon</i>	<i>0.3267</i>	<i>120</i>
<i>Visayas</i>	<i>0.4847</i>	<i>126</i>
<i>Mindanao</i>	<i>0.0536</i>	<i>54</i>

A copy of the said Decision is attached as Annex "G";

12. Pursuant to the dispositive portion of the Commission's Decision on ICERA, the NPC and PSALM were authorized to recover the ICERA for Luzon at the rate of PhP0.3637/kWh for 96 months. The Decision said the recovery will begin on the March 26, 2012 to April 25, 2012 billing;
13. Similarly, pursuant to the dispositive portion of Commission's Decision on GRAM, the NPC and PSALM were authorized to recover the GRAM for Luzon at the rate of PhP0.3267/kWh for 120 months. The Decision also said the recovery will begin on the March 26, 2012 to April 25, 2012 billing;
14. BENEKO had paid GRAM and ICERA to the NPC and PSALM until such time that it inked an EPPA with TPEC. TPEC continued to bill BENEKO GRAM and ICERA since it was the successor generator of the NPC and PSALM tasked to collect GRAM and ICERA until they are fully recovered;
15. However, BENEKO found out sometime in 2013 that it has overpaid TPEC on ICERA and GRAM. It realized that the Decision on ICERA was subject to a Relevant Test Period which is from July 2009 to April 2010 or for a period of ten (10) months as categorically stated on page 18 of the Commission's Decision on ICERA (Annex "D"). In like manner, the Decision on GRAM was also subject to a Relevant Test Period which is from January 2007 to April 2011 or for a period of forty (40) months as clearly stated on page 35 of the Commission's Decision on GRAM (Annex "E");

The ICERA

16. BENEKO computed ICERA supposed to be paid to the NPC and PSALM and TPEC by multiplying the Commission-approved ICERA rate of PhP0.3637/kWh by the energy purchased from the NPC/PSALM and TPEC covering the Relevant Test Period of ten (10) months or from July 2009 to April 2010. For the said period, ICERA due to the NPC and PSALM, and TPEC were PhP32,733,000.00 and PhP56,680,290.45, respectively. The total ICERA due to both the NPC/PSALM and TPEC is PhP88,413,290.45. It appears that BENEKO has overpaid TPEC the amount of PhP72,173,826.29 for ICERA as of November 2013;

a. As per BENEKO's computation based on the tables below, ICERA due to the NPC and TPEC for the Relevant Test Period amounted to PhP32,733,000.00 and PhP55,680,290.45, respectively, or for a total of PhP88,413,290.45:

Year		2009					
Month	NPC				TPEC		
	Energy Purchased (kWh)	ICERA Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
July	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
August	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
September	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
October	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
November	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
December	15,000,000	15	0.3637	5,455,500.00	6,789,000	0.3637	2,469,159.30
Total	90,000,000			32,733,000.00	40,734,000		14,814,955.80

Year		2010					
Month	NPC				TPEC		
	Energy Purchased (kWh)	ICERA Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
January		16	0.3637		27,296,301	0.3637	9,927,664.67
February		16	0.3637		30,278,293	0.3637	11,012,215.04
March		16	0.3637		26,946,284	0.3637	9,800,363.35
April		16	0.3637		27,839,130	0.3637	10,125,091.58
Total					112,360,007		40,865,334.65

ICERA Due to the NPC = 32,733,000.00 ICERA Due to TPEC = 55,680,290.45
 Total PhP 88,413,290.45

- b. The tables below show that based on the energy purchased from TPEC, BENEKO paid to it ICERA the amounts of PhP74,038,121.68 from April 2012 to December 2012 and PhP86,548,995.06 from January 2013 to December 2013, or for a total amount of PhP160,587,995.06 which is more than ICERA amount of PhP88,413,290.45 which BENEKO was supposed to pay. This resulted to overpayment of PhP72,173,826.29:

Year 2012

Month	TPEC		
	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
April	22,138,698	0.3637	8,051,844.46
May	22,199,586	0.3637	8,073,989.43
June	22,436,231	0.3637	8,160,057.21
July	24,750,671	0.3637	9,001,819.04
August	19,524,119	0.3637	7,100,922.08
September	21,535,171	0.3637	7,832,341.69
October	23,105,150	0.3637	8,403,343.06
November	23,957,897	0.3637	8,713,487.14
December	23,921,687	0.3637	8,700,317.56
Total	203,569,210		74,038,121.68

Year 2013

Month	TPEC		
	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
January	23,671,166	0.3637	8,609,203.07
February	22,762,497	0.3637	8,278,720.16
March	20,857,100	0.3637	7,585,727.27
April	21,273,099	0.3637	7,737,026.11
May	22,737,654	0.3637	8,269,684.76
June	23,817,006	0.3637	8,662,245.08
July	19,979,437	0.3637	7,266,521.24
August	19,429,071	0.3637	7,066,353.12
September	17,503,445	0.3637	6,366,002.95
October	19,925,274	0.3637	7,246,822.15
November	26,012,343	0.3637	9,460,689.15
December**	26,500,603		-
Total	264,468,695		86,548,995.06

ICERA Paid to TPEC per the
Commission's Order on ICERA
Recovery = 160,587,116.74

ICERA

Computed ICERA Amount Due to NPC	PhP	32,733,000.00
Computed ICERA Amount Due to TPEC		<u>55,680,290.45</u>
Total Computed ICERA		<u>88,413,290.45</u>

ICERA Amount Paid to TPEC Pursuant to
the Commission's Order on ICERA
Recovery From April 2012 to October
2014 160,587,116.74

Overpayment PhP (72,173,826.29)

The GRAM

17. BENEKO also computed GRAM supposed to be paid to the NPC and PSALM, and TPEC by multiplying the Commission-approved GRAM rate of PhP0.3267/kWh by the energy purchased from the NPC/PSALM and TPEC covering the relevant test period of forty (40) months or from January 2007 to April 2010. For the said period, GRAM due to the NPC and PSALM, and TPEC were PhP189,031,620.09 and PhP116,554,801.18, respectively. The total GRAM due to both the NPC/PSALM and TPEC is PhP305,586,421.26;

a. As shown in the tables below, BENEKO's calculation of GRAM due to the NPC/PSALM and TPEC for the Relevant Test Period January 2007 to April 2010 amounted to PhP189,031,620.09 and PhP116,554,801.18, respectively, or for a total amount of PhP305,586,421.26:

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Year **2007**

Month	NPC				TPEC		
	Energy Purchased (kWh)	GRAM Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
January	18,056,858	10	0.3267	5,899,175.51	6,789,000	0.3267	2,217,966.30
February	17,937,356	10	0.3267	5,860,134.21	6,789,000	0.3267	2,217,966.30
March	15,854,227	10	0.3267	5,179,575.96	6,789,000	0.3267	2,217,966.30
April	18,250,868	10	0.3267	5,962,558.58	6,789,000	0.3267	2,217,966.30
May	17,359,805	10	0.3267	5,671,448.29	6,789,000	0.3267	2,217,966.30
June	18,072,128	10	0.3267	5,904,164.22	6,789,000	0.3267	2,217,966.30
July	17,439,982	10	0.3267	5,697,642.12	6,789,000	0.3267	2,217,966.30
August	18,150,164	10	0.3267	5,929,658.58	6,789,000	0.3267	2,217,966.30
September	18,067,891	10	0.3267	5,902,779.99	6,789,000	0.3267	2,217,966.30
October	17,222,671	10	0.3267	5,626,646.62	6,789,000	0.3267	2,217,966.30
November	17,756,371	10	0.3267	5,801,006.41	6,789,000	0.3267	2,217,966.30
December	17,887,753	10	0.3267	5,843,928.91	6,789,000	0.3267	2,217,966.30
Total	212,056,074			69,278,719.38	81,468,000		26,615,595.60

Year **2008**

Month	NPC				TPEC		
	Energy Purchased (kWh)	GRAM Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
January	18,483,209	10	0.3267	6,038,464.38	6,789,000	0.3267	2,217,966.30
February	19,369,779	10	0.3267	6,328,106.80	6,789,000	0.3267	2,217,966.30
March	17,482,243	10	0.3267	5,711,448.79	6,789,000	0.3267	2,217,966.30
April	19,217,878	10	0.3267	6,278,480.74	6,789,000	0.3267	2,217,966.30
May	14,000,000	11	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
June	14,000,000	11	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
July	14,000,000	12	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
August	14,000,000	12	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
September	14,000,000	12	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
October	14,000,000	13	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
November	14,000,000	13	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
December	14,000,000	13	0.3267	4,573,800.00	6,789,000	0.3267	2,217,966.30
Total	212,056,074			69,278,719.38	81,468,000		26,615,595.60

Year **2009**

Month	NPC				TPEC		
	Energy Purchased (kWh)	GRAM Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
January	15,000,000	14	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
February	15,000,000	14	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
March	15,000,000	14	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
April	15,000,000	15	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
May	15,000,000	15	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
June	15,000,000	15	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
July	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30

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August	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
September	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
October	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
November	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
December	15,000,000	16	0.3267	4,900,500.00	6,789,000	0.3267	2,217,966.30
Total	180,000,000			58,806,000.00	81,468,000		26,615,595.60

Year	NPC				TPEC		
	Energy Purchased (kWh)	GRAM Application	Approved Recovery Charge (PhP)	Peso Amount (PhP)	Energy Purchased (kWh)	Approved Recovery Charge (PhP)	Peso Amount (PhP)
2010							
January		17	0.3267		27,296,301	0.3267	8,917,701.54
February		17	0.3267		30,278,293	0.3267	9,891,918.22
March		17	0.3267		26,946,284	0.3267	8,803,350.86
April		17	0.3267		27,839,130	0.3267	9,095,043.77
Total					112,360,007		36,708,014.38

GRAM Due to the NPC = 189,031,620.09 GRAM Due to TPEC = 116,554,801.18
 Total PhP 305,586,421.26

b. As of October, 2014, BENEKO has paid GRAM in the amount of PhP233,412,594.98. The total amount of GRAM supposed to be paid by it in the amount of PhP305,586,421.26 less the GRAM actually paid in the amount of P233,412,594.98 will result to a balance of PhP72,173,826.29. Since the amount overpaid by BENEKO in ICERA is the same as its balance in GRAM, it decided to use ICERA overpayment to offset the balance in GRAM. The table below provides the summary:

GRAM

Computed GRAM Amount Due to NPC	PhP 189,031,620.09
Computed GRAM Amount Due to TPEC	116,554,801.18
Total Computed GRAM	<u>305,586,421.26</u>

GRAM Amount Paid to TPEC Pursuant to the Commission's Order on GRAM Recovery From April 2012 to October 2014	<u>233,412,594.98</u>
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Balance for Payment	PhP <u>72,173,826.29</u>
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18. BENEKO has called the attention of TPEC several times on the over-recovery of ICERA but the latter has been adamant on its position that there is no such over-recovery since as per their EPPA, the rate per kWh charged to the former is based on the NPC rate, as published in the website of the NPC. In a series of communication between them, BENEKO maintained that the EPPA has dictated the NPC rate as the reference for the amount to be paid by it for its energy purchases from TPEC. TPEC refused to acknowledge BENEKO's plea that ICERA must be excluded already from its generation bill since the same had been fully recovered and paid. Copies of the letters between the parties are attached as Annex "H and series";

19. BENEKO has already decided to exclude ICERA from TPEC's power bill effective the November 26, 2013 to December 26, 2013 billing and did not anymore include the same in the pass-on generation cost to its member-consumers starting January 2014 and onwards. TPEC vehemently objected, saying that BENEKO could not unilaterally withhold ICERA amount since that would be a violation of the provisions of the EPPA. In a February 2014 letter, TPEC insisted that BENEKO should still pay ICERA. It billed BENEKO the amount of PhP147,832,372.58 in unpaid bills arising from ICERA;

The Issue

20. BENEKO wishes to be clarified on the import of the Commission's Decisions on ICERA and GRAM. It wants to seek the Commission's declaration on the main issue – Should not ICERA and GRAM be applicable only for the period that it should be recovered as per the Commission's Decisions? And is it proper for TPEC to continue billing BENEKO said ICERA from its billing for the energy purchases after the same has been fully recovered?;

21. The Commission's Decision on ICERA states in part: *"Accordingly, NPC and PSALM are authorized to recover the following Deferred Accounting Adjustments (DAAs) on ICERA for Luzon, Visayas and Mindanao Grids effective their March 26, 2012 to April 25, 2012 billing period until the end of the corresponding recovery periods or*

until such time that the full amount shall have been recovered/refunded, whichever comes earlier” (underscoring supplied);

22. It is clear from the Decision that while the Commission has set the recovery period of 96 months for ICERA and 120 months for GRAM, the same shall cease until the time that the amount shall have been fully recovered. In the case of BENEKO, the period of recovery has been shortened because of its load growth;
23. TPEC claims that the EPPA is clear on the basis of the agreed electricity fee – the NPC rates. But the Commission has decided clearly on the duration of the collection of GRAM and ICERA. The Commission’s Decisions specified the recovery periods of the GRAM and ICERA. While they are indexed as part of the NPC Rate, they were included by virtue of a Decision that declared the period or the duration over which such deferred adjustments are to be recovered;
24. For clarity, BENEKO reiterates the EPPA:

“Effective NPC Cost applicable for the month as billed by the National Power Corporation (TRANSCO) as approved by ERC. Includes Generation Charges (composed of Generation Cost, Franchise and Benefits to Host Communities Taxes and Foreign Exchange Rate Adjustment (FOREX) due to Generation Company (GENCO)), Transmission Delivery Charges (composed of Transmission and Sub-transmission Power Delivery Charges), Cross-Subsidy Charges (composed of Intra-Regional Grid Cross Subsidy Demand and Energy Charges), Ancillary Services Charges (composed of Load Following and Frequency Regulation, Spinning Reserve and Back-up Power Service Charges), System Operation Charge, and Supply Metering Charge and other adjustments that may be charged by NPC and TRANSCO. Expressed in PhP/kWh.” (underscoring supplied);

25. The foregoing provision in the EPPA uses the word “MAY” which means that the generation rate of the NPC may include other adjustments the NPC may impose.

GRAM and ICERA are such “other adjustments” and their inclusion by NPC was by virtue of the Commission’s Order. In fact, the rate schedule provided in the Amended EPPA includes the phrase **“such other charges as may be allowed or approved by the ERC from time to time”**. But the inclusion of ICERA and GRAM as “other adjustments” or “other charges” was subject to a definite period as per the Commission’s Decisions. The Commission did approve the inclusion of ICERA and GRAM in the NPC rate but the Commission provided for a Relevant Test Period, thus, the imposition of ICERA and GRAM as part of the generation cost must accede to such period. To do the contrary would mean overpayment or underpayment. The Commission’s Orders on “Recoveries and Refunds” confirm this fact;

26. BENEKO had been religiously paying the adjustments in the previous billings of TPEC. It only excluded ICERA and GRAM after having calculated that the amount due for recovery as per the Commission’s Decisions has already been fully recovered. Should there be future Commission’s Orders for the recovery of ICERA and GRAM, BENEKO will surely consider their inclusion in the rate to be paid to TPEC until after the amount due for recovery shall have been fully recovered;
27. The purpose of ICERA and GRAM is to allow the generation companies to recover fluctuations in fuel cost and foreign exchange rate. The NPC and PSALM applied for such adjustment because they believed they suffered from under-recovery thereof. The Commission approved their applications so they were allowed to recover but the Commission said only for this Relevant Test Period. Thus, when the amount due to be recovered has been satisfied, GRAM and ICERA must be stopped. Therefore, while BENEKO and TPEC agreed to reference their EPPA on the NPC TOU rate which included ICERA and GRAM, such ICERA and GRAM are subject to the condition that their recovery will cease after the lapse of the period on which they should be recovered;
28. It is to be emphasized that the NPC TOU rate provides for another recovery mechanism which is the Automatic Cost Recovery Mechanism (ACRM). TPEC cannot complain over BENEKO’s exclusion of ICERA and GRAM from its

bill since the ACRM allows the computation of adjustments in foreign exchange rate and fuel cost fluctuations. If BENEKO will continue to pay ICERA, GRAM and ACRM, this will result to overkill;

29. TPEC has been paid more than what it must receive from BENEKO. This is a case of *solutio indebiti* which must be stopped. The overpayment occurred when TPEC continued to bill and collect ICERA from BENEKO after the expiration of the Relevant Test Period the Commission has declared to be the recovery period. The rule is one cannot collect more than what it is legally entitled to;
30. BENEKO did not gain anything when it decided to stop paying ICERA. The halt to the collection of ICERA was actually for the advantage of its member-consumers. It meant that a substantial component of the generation cost passed-on to them as ICERA has been already been removed, giving them at least a relief from the omission of one component of the generation cost. The continuous implementation of ICERA and GRAM is beneficial to TPEC but at the expense of BENEKO's member-consumers. Thus, the Commission must come to the cause of protecting public interest;
31. BENEKO's stand is bolstered by the Notice to Cease Implementation of the 10th to 17th GRAM and 15th to 16th ICERA for Kayapa as per letter received from the PSALM dated January 30, 2015. After the reconciliation conducted between BENEKO and the PSALM, it was established that the PSALM has fully recovered ICERA and GRAM and thus informed BENEKO that it shall cease to bill ICERA and GRAM effective the December 26, 2014 to January 25, 2015 billing period. Copies of the letter and power bill of the PSALM which already excluded ICERA and GRAM are attached as Annexes "I" and "J", respectively;
32. BENEKO and TPEC tried to settle the issue but to no avail. BENEKO in fact has invited TPEC to file a joint petition before the Commission to clarify the controversy but the latter ignored the suggestion. Instead, it wrote the Commission seeking its assistance to compel BENEKO to pay. The parties appeared before the Commission's

Legal Office but the deadlock remained. BENEKO said it will bring the issue before the Commission. A copy of BENEKO's letter to the Commission is attached as Annex "K"; and

The Prayer

33. Thus, it prays that after due notice and hearing, the Commission shall resolve the dispute in its favor and against TPEC by declaring that:
- a. ICERA and GRAM should only be recovered within a specific period which is the Relevant Test Period contained in the Commission's Decisions.; and
 - b. ICERA should not anymore be included in the NPC reference rate for the generation cost that TPEC bills BENEKO.

The Commission has set the petition for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **August 24, 2015 (Monday) at three o'clock in the afternoon (3:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) 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 (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the petition or comment thereon at any stage of the proceeding before the petitioner concludes the presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who may wish to have a copy of the petition may request the petitioner, prior to the date of the initial hearing, that they be furnished with a copy of the petition. The petitioner is hereby directed to furnish all those making such request with copies of the petition and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the petition and other pertinent records filed with the Commission during the usual office hours.

WITNESS, the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 20th day of July, 2015 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III