

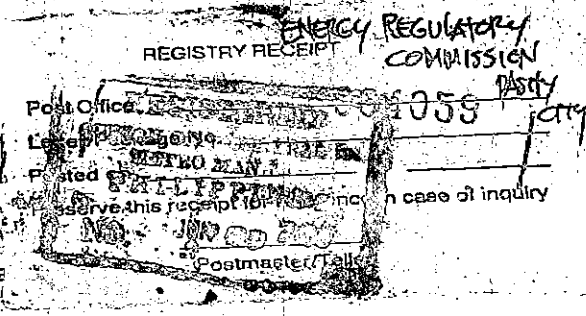
**IN THE MATTER OF THE PETITION
FOR THE AVAILMENTS FROM THE
UNIVERSAL CHARGE THE SHARE
FOR MISSIONARY
ELECTRIFICATION**

07-0749

ERC CASE NO. 2002-165

**NATIONAL POWER CORPORATION
SMALL POWER UTILITIES GROUP
(NPC-SPUG)**

Petitioner.



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COMMENT
(on PSALM's Motion for Clarification)

Petitioner National Power Corporation-Small Power Utilities Group (NPC-SPUG), thru the undersigned counsels, by way of comment to Power Sector Assets and Liabilities Management Corporation's (PSALM for brevity) Motion for Clarification dated June 9, 2004, to this Honorable Commission most respectfully avers that:

1. In its motion for clarification, PSALM raised the following issues for clarification, to wit:

"A. Whether PSALM should continue to disburse UC-ME to petitioner NPC-SPUG in excess of the estimated levy/subsidy requirement of P1.34 Billion.

B. Whether PSALM is authorized to disburse the corresponding interest income earnings of the respective STFs to the beneficiaries even without a subsequent order from the Honorable Commission?"

2. PSALM alleged that as of May 15, 2004, the total reconciled UC-ME remittances from March 2003 to May 15, 2004 amounted to P1.173 Billion for which disbursements had already been made, net of P20,000.00 maintaining balance in the Universal Charge-Missionary Electrification (UC-ME) Special Trust Fund (STF). PSALM said that it will continuously remit the remaining amount of P170,046,738 on the succeeding disbursement. However, once the amount of P1.34 Billion has been fully remitted to petitioner NPC-SPUG, PSALM will not make further

remittances to the former in the absence of a new decision from the Energy Regulatory Commission (ERC).

3. With all due respect, it is the petitioner's position that it would be best if the issues pointed out by PSALM in this case be discussed or considered in a broader concept or in a more general term inasmuch as the same will certainly apply to or affect future petitions, disbursement and utilization of the Universal Charge (UC).

4. It must be noted that petitions for availment of the Universal Charge should be filed with the ERC on or before March 15 of every year pursuant to Section 4 of Rule 18 of the Implementing Rules and Regulations (IRR) of RA 9136 otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). On the other hand, the same Rule also provides that the ERC shall issue the corresponding order no later than June 26 after evaluating the petitions filed.

5. In following the prescribed yearly filing for availment of the UC, petitioner determines the UC-ME in absolute peso terms based on the projected expenditures for a given calendar year. Such projections are based on the approved Missionary Electrification Development Plan (MEDP) of the Department of Energy (DOE) as mandated by Section 4 (Source of Funds) of Rule 13 of the IRR of RA 9136. Similarly, the corresponding P/kWh UC-ME requirements are determined on the basis of the projected Philippine energy sales for a calendar year.

Determination of One Year Period Coverage: Calendar Year vs. Twelve Month Period

6. It will be noticed from the foregoing circumstances that there is an incongruity between the intended period of utilization and the collection period of the UC. It must be stressed that the intended period of utilization which is the basis of the petition of NPC-SPUG and the decision of the Honorable ERC is one (1) calendar year, that is January to December 2003, while the collection period on the other hand, is expected to start only after the issuance of the Honorable ERC of an order which should not be later than June 26 of the year pursuant to the provisions of the IRR of RA 9136. Hence, the UC-ME requirement of a given calendar year (e.g. 2003) is not likely to be collected in full in the same year (i.e., for the year 2003). In this situation, the amount to be disbursed by PSALM shall be limited only to the actual collections in the

absence of any excess funds from previous UC-ME collections to cover for the shortfall.

7. To remedy the conflict between the intended period of utilization and the collection period of the UC as well as to address the issues presented in this case, the Honorable Commission with due respect should take into consideration and take note of the following scenarios/options and the disadvantages:

7.1. The one (1) year period should be treated or interpreted as *twelve (12) month period* and not as calendar year to be reckoned from the effectivity of the UC-ME as authorized by the Honorable ERC (e.g. from January 26, 2003 to January 26, 2004 or from June 26, 2003 to June 26, 2004). This scheme however would create difficulties and inconsistencies in the formulation and monitoring of the MEDP, particularly in defining the period coverage which is based on a calendar year. Further, there would be difficulties also in the monitoring, claiming for availment, disbursement and utilization of the UC-ME. Accordingly, the amount of monthly claims for and allowed releases of the UC-ME will differ depending on whether they are computed based on calendar year or a moving 12-month period.

Under (Over) Recovery in UC-ME

7.2 It must be stressed also that regardless of which of the two (2) schemes of defining the period coverage to be adopted (i.e., either the 12 month period or calendar year), there is always the possibility that the approved UC-ME level as for instance the amount of P1.34 Billion for 2003 will not be achieved since the actual energy sales may turn out lower than the projected levels, that is, assuming that there are no collection inefficiencies and delayed remittances. In view of this, problems may arise as to how the beneficiary would be able to receive in full the approved UC-ME level.

7.3 To address the problem, the following options may be considered: (1) to extend the collection, remittance and disbursement of the UC until the approved level is attained, and (2) by traing-up, that is, by including the unrecovered amount in the succeeding year's petition.

7.4 In this particular case, PSALM may have chosen Option 1 in addressing the issue. Again, with due respect, petitioner would like the Honorable Commission to take note of the disadvantages of the first option, to wit:

a) In case the approved amount will be attained beyond twelve (12) months, there would be overlapping in the UC-ME for the given year where the under (over) recovery occurs and the UC-ME for the succeeding year.

b) In the event that the reckoning period adopted is the *calendar year* instead of a *moving 12-month period*, the following are the attendant issues using as example the ongoing 2004 collection of the 2003 based UC-ME:

b.1) The non-release by PSALM of the continuing collections in 2004 would have an implication that the prevailing rate does not have any legal basis starting January 2004. Accordingly, any collections obtained cannot be used for any purpose not even to pay for the periods when there are shortfalls as alleged by PSALM.

b.2) Complaints from the consumers may likely arise in the future as they might question why the UC-ME of P0.0373/kWh is being charged to end-users without any authority from the ERC. Further, the same would lead to an inconsistent treatment of UC-ME collected in 2004. In fact, per information obtained from PSALM itself, the latter already released to NPC some of the collected UC-ME for 2004 because the collections for 2003 were below than the projected level.

b.3) With due respect, for PSALM to be consistent in its treatment of the UC-ME collections in 2004, its disbursement to NPC should have been limited only to the amount actually collected in 2003 in the absence of any excess UC-ME funds with legal basis that will cover the shortfall. The difference in the ERC's approved amount of P1.34 Billion (projected level) and actual collections should be reported as shortfall in collection for the year caused by ↗

lower projected energy sales and/or deficient remittance by collecting entities.

b.4) Although it would require a provisional authority from the Honorable ERC (i.e., approval of the P0.0373/kWh as UC-ME for 2004 with retroactive effectivity starting January 2004 billing period), PSALM should likewise disburse whatever is being continuously collected and remitted to it by the collecting entities. In this connection, it would be advisable for PSALM to segregate and/or identify the UC-ME collected in 2003 and 2004 respectively to enable petitioner NPC-SPUG to account for UC-ME utilization separately for each year. This should also be done for the succeeding years.

7.5 The second option (i.e. truing up by including shortfall in succeeding year's petition) is likewise not advisable considering that it will just pad the succeeding year's petition for UC. In effect, previous year's requirements will compete with those for the current year with pending petition.

8. In view of all the foregoing, it is the petitioner's position that the adoption of the calendar year's reckoning period of the UC-ME must be consistent with the MEDP annual period coverage. As such, it will facilitate the monitoring of MEDP which includes the availment, disbursement and utilization process of the UC-ME.

9. Further, the filing of the UC for a given calendar year should be done in the year prior to the calendar year (e.g. September of every year) to give ample time for regulatory review and that the effectivity date should be reckoned from the billing month of January of the calendar year. This will avoid difficulties and inconsistencies in the formulation and monitoring of the MEDP particularly in defining the period coverage which is based on a calendar year. Petitioner NPC-SPUG believes that this scheme is still in accordance with the provisions of the IRR of the EPIRA setting March 15 and June 26 as deadline for the filing of the petition for availment of the UC and the issuance of the corresponding order by the ERC respectively.

10. In the event however that the calendar year process will not be adopted, the Honorable Commission with due respect should instead

adopt as benchmark the 12-month period rather than the approved level of the UC-ME to avoid administrative difficulties brought about by the overlap that may arise between the UC-ME for the previous year and those for the current year.

11. Petitioner also maintains that the Honorable Commission should issue a provisional authority for 2004 UC-ME to be reckoned from January 2004 billing period. This is to allow PSALM to continuously disburse funds to NPC-SPUG and to justify the collection of rates from the end-users.

12. Further, it is important for the Honorable Commission and PSALM to consider first and foremost the urgent need for UC-ME in sustaining SPUG's current operations as against the procedural and/or administrative requirements. Again, with all due respect, it would be more considerate for PSALM or for the Honorable Commission to allow the continuous disbursement of funds to NPC-SPUG rather than stop or hold the release of the continuing collections of the UC-ME to it (NPC-SPUG) pending the approval of the 2004 UC-ME by the Honorable Commission. This would ensure funds to be used by SPUG for payment of fuel and other operating expenses.

13. It must be emphasized that the Universal Charge is primarily intended for SPUG. PSALM with due respect is merely an administrator of the funds generated from UC. THE ULTIMATE OWNER OR BENEFICIARY OF THE SAME IS SPUG. This is so because the funds would not come into existence in the first place without SPUG, the latter being the collecting entity of the said UC. It is the petitioner's position therefore that PSALM SHOULD CONTINUOUSLY RELEASE THE FUNDS AS THE NEED ARISES UNTIL THE HONORABLE ERC APPROVES THE PENDING PETITION FOR 2004 UC-ME.

14. With regard to the concern raised by PSALM in its motion for clarification as to NPC's reliance on the UC-ME as the sole source of capital, petitioner would like to reiterate that it is not totally ruling out the option of securing loans. As explained in its Motion for Reconsideration (filed on August 13, 2003) seeking flexibility in the utilization of the UC-ME, petitioner stated that securing loans would not be advisable as it involves a relatively long process as well as uncertainty especially those to be obtained from Official Development Assistance (ODA). Petitioner is likewise constrained to rely solely on the UC-ME in *g*

view of the government's policy to limit borrowings due to the present enormous fiscal deficit.

15. Petitioner would like the Honorable Commission to also consider or allow the multi-year filing of petition of the UC-ME. As stated in its petition for 2004 UC-ME, the multi-year petition is consistent with the five (5) year period coverage of the MEDP. As compared to yearly petition, the multi-year petition entails less regulatory and/or administrative burdens and will thus facilitate the planning process through stable annual funding. This will likewise complement the flexibility granted by the Honorable Commission to NPC to deal with the dynamic nature of the MEDP. Besides, in the event that the projected energy sales is not achieved in any given calendar year, truing-up for the previous year's balance will not affect the succeeding year's requirements. There will then separate petitions for the truing-up. In this manner, the truing-up will be in addition to the currently approved universal charge.

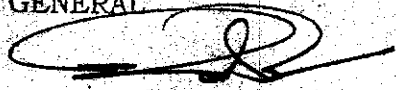
16. Finally, with regard to the interest earned on UC remittances, it is the petitioner's position that the same should also be given or disbursed to NPC-SPUG as the said amount is already allocated to it. Moreover, it would be to the benefit of missionary electrification if the said interest earned on UC remittances deposits will be disbursed to SPUG. This will allow SPUG to pursue other priority projects that could not be covered by the approved UC level.

PRAYER

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of this Honorable Commission that the foregoing comment be NOTED and CONSIDERED. It is likewise prayed that PSALM be directed to continuously release/disburse UC-ME funds to NPC-SPUG on top of the P1.34 Billion already reimbursed to it pending the approval of the Honorable Commission of the 2004 UC-ME.

Other reliefs just and equitable under the premises are likewise prayed for.

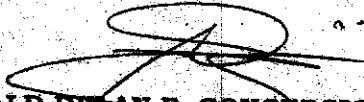
Quezon City for Pasig City, Metro Manila, June 24, 2004.



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EXPLANATION

Filing and service of the foregoing Comment were done by registered mail instead of personal service as mandated by the 1997 Rules of Civil Procedure due to distance, time and manpower constraints.



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