

RULE 5. GENERATION SECTOR

Section 1. Guiding Principle.

Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.

No Person may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC from the ERC to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC.

Section 2. Scope of Application.

This Rule shall apply to all facilities used or to be used for the Generation of Electricity, including but not limited to the following:

(a) Existing Generation Facilities.

Existing Generation Facilities shall include:

(i) Spin-off Facilities of NPC or their transferees, including Generation Facilities owned by NPC transferred to PSALM and subsequently privatized pursuant to the Act;

(ii) Agus and Pulangui Complexes;

(iii) Facilities owned and operated by SPUG;

(iv) Accredited facilities under BOT arrangement and other variants with NPC, SPUG, National Irrigation Administration (NIA), Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) and other government agencies;

(v) Accredited facilities under BOT arrangement and other variant with Distribution Utilities;

(vi) Facilities Owned or Operated by a Distribution Utility;

(vii) Facilities under Contract with a Distribution Utility;

(viii) Self-Generation Facilities;

(ix) Facility operating in EZs; and

(x) Facility operating in isolated areas.

(b) Generation Facilities Under Construction.

Generation Facilities under construction shall include:

(i) DOE-Accredited Facility under BOT arrangement and other variants with NPC, SPUG, PNOE-EDC, NIA and other government agencies;

(ii) DOE-Accredited Facility under BOT arrangement and other variants with Distribution Utilities;

(iii) Non DOE-Accredited Facility under contract with Distribution Utilities;

(iv) Self-Generation Facility;

(v) Facility locating in EZs; and

(vi) Facility operating in isolated areas.

(c) New Generation Facilities

New Generation Facilities shall include:

(i) Any newly-constructed facility with appropriate health, safety and environmental clearances connected to the Grid;

(ii) Any facility currently under BOT arrangement and other variants with NPC, SPUG, PNOE-EDC, other government agencies, and government- owned and- controlled corporations; and

(iii) Any facility that shall operate in an isolated area.

(d) This Rule shall also apply to the PSALM-appointed IPP Administrators.

Section 3. Ownership Limitation.

No Generation Company, Distribution Utility, or its respective subsidiary or Affiliate or stockholder or official of a Generation Company or Distribution Utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire. Likewise, the TRANSCO or its Buyer or Concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, whether directly or indirectly, in any Generation Company or Distribution Utility. Except for *ex officio* government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any Generation Company, Distribution Utility or Supplier. This section shall not apply to PSALM during the period that its generation assets are being privatized pursuant to Section 47 of the Act.

Section 4. Obligations of a Generation Company.

(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation

Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility.

(ii) A Generation Facility which has been previously issued a COC shall not be required to secure a COC even if acquired by a new owner: *Provided*, That such new owner shall register with ERC as specified above. Upon registration, such Person shall be deemed authorized to operate such Generation Facility.

(b) A Generation Company shall comply with the following operating standards:

(i) Technical Standards.

A Generation Company shall ensure that all its facilities connected to the Grid meet the technical design and operational Page 21 of 100 criteria of the Grid Code and Distribution Code promulgated by ERC, Philippine Electrical Code, and the TRANSCO or its Buyer or Concessionaire including, among others, standards for voltage fluctuation, frequency, harmonics, security, reliability, unplanned outages and provision of Ancillary Services and shall operate in accordance with such operational criteria.

(ii) Financial Standards.

A Generation Company with facilities connected to the Grid shall conform to the financial standards provided in the Grid Code. These standards shall take into consideration the nature and function of a Generation Facility. Furthermore, such standards are set to ensure that the Generation Company meets the minimum financial standards to protect the public interest and any customer procuring services from the said Generation Company.

(iii) Environmental Standards.

A Generation Company shall ensure that its facilities comply with applicable environmental laws, rules and regulations.

(c) A Generation Company operating a Generation Facility in isolated areas shall meet the technical and financial standards to be issued by the ERC using applicable and practicable criteria within two (2) years, or such other period as may be specified by the ERC, from the issuance of such technical and financial standards.

(d) A Generation Company shall structurally and functionally unbundled its generation business activities and rates from its distribution and supply businesses as provided in Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants and Rule 15 on Unbundling of Rates.

(e) Prior to the implementation of Open Access and Retail Competition, the prices charged by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts (TSCs) as specified in Section 67 of the Act. Upon introduction of Open Access and Retail Competition or establishment of WESM, whichever comes first, the rates of a Generation Company shall not be subject to regulation by the ERC except as otherwise provided by the Act.

However, for a Generation Company operating a facility in SPUG areas and isolated areas, the generation rates for such facility shall be fixed and determined by ERC as set forth in Rule 13 on Missionary Electrification.

(f) A self-generation company not connected to a Distribution Utility, unless otherwise provided under these Rules, shall remit directly to TRANSCO the corresponding Universal Charge set by ERC. In Page 22 of 100 relation to this, TRANSCO or its Buyer or Concessionaire or the appropriate Distribution Utility, when connected to the self-generation company, shall have access to the customer side of the meter in order to determine the utilization of such Generation Facility for the purpose of assessing the corresponding Universal Charge as provided in Rule 18 on Universal Charge.

(g) A Generation Company shall comply with Rule 29 on Benefits to Host Communities.

(h) Upon the establishment of the WESM by the DOE, jointly with Electric Power Industry Participants, a Generation Company shall comply with the membership criteria as prescribed under the WESM Rules as set forth in Rule 9 on WESM.

(i) Pursuant to Section 9(e) of the Act, a Generation Company with facilities connected to a Grid shall make information available to the Market Operator to enable the Market Operator to implement the appropriate dispatch scheduling and shall comply with the said scheduling in accordance with the WESM Rules. A Generation Company shall likewise make information available to the grid operator to facilitate Central Dispatch by the grid operator. Subject to Technical Constraints, the grid operator of the TRANSCO or its Buyer or Concessionaire shall provide Central Dispatch to a Generation Facility connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator, which schedule shall take into account outstanding bilateral contracts.

(j) A Generation Company shall comply with Rule 11 on Cross Ownership, Market Abuse and Anti-Competitive Behavior.

(k) A Generation Company that owns a dedicated point-to-point limited transmission facility shall transfer ownership of such facility to the TRANSCO at a fair market price in the event that such facility is required for competitive purposes as prescribed in Section 5 (b) of this Rule.

(l) A Generation Company shall submit to DOE any information as may be required by the DOE for the preparation of the PDP, subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information.

(m) A Generation Company that fails to comply with any of these obligations, including compliance with technical standards, shall be subject to fines and penalties as may be imposed by the ERC.

Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company.

(a) Subject to prior authorization from ERC, TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities: *Provided, That:*

(i) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve End-users or Suppliers directly;

(ii) The facilities are included and consistent with the TDP as certified by TRANSCO or its Buyer or Concessionaire; and

(iii) Any other documents that may be required by the ERC.

(b) In the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price. In case of disagreement on the fair market price, the ERC shall determine the fair market value of such asset, either directly or through such dispute resolution mechanisms as ERC may specify.

Section 6. Generation Charges and VAT.

(a) Within ninety (90) days from the effectivity of these Rules, the ERC shall issue guidelines for the regulation of power sales by Generation Companies applicable prior to the implementation of Retail Competition and Open Access or establishment of WESM, whichever comes first.

(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules.