



*DEPARTMENT OF ENERGY*

**COMPENDIUM OF ENERGY LAWS  
CIRCULARS AND OTHER ISSUANCES**

**VOLUME 4A**

**ELECTRIC POWER INDUSTRY**





# FOREWORD

*by the Secretary*

## ***“Ignorantia juris non excusat”***

*The Philippine energy sector has undergone significant structural transformations over the years.*

*Vital up to date developments including policies and programs to guide the government, stakeholders and consumers alike in making informed energy choices is now collaboratively synergized.*

*The Department of Energy (DOE) is proud to present the updated Second Edition of the Compendium of Energy Laws to the public, a comprehensive reference on the various Republic Acts, Protocols and Directives to guide the DOE, its attached agencies especially the upstream and downstream industry about the dynamics of the participation and responsibilities of each energy player.*

*I commend the invaluable efforts of the DOE-Legal Services and their partners in gathering all these in one compilation.*

*This publication is tangible proof of the continuing productive growth of meeting the needs of those serviced and those supplying power.*

*Patriotically, let us explore more ways to raise the quality of life of our Kababayans.*

*Para sa Lupang Hinirang.*

*Maraming salamat po.*

  
**ALFONSO G. CUSI**





## **PREFACE**

*by the Supervising Assistant Secretary for Legal Services*

*The compendium of energy laws, rules, regulations and other issuances is a helpful tool to guide all industry players, relevant government entities, practitioners and the general public. While the Department of Energy (DOE) continues to craft relevant rules and regulations in the exercise of its policy making power, the compendium's density shows the sheer volume of laws, rules and regulations that are existing currently being implemented.*

*But what seems to be the missing link to fully achieve the common objectives of these issuances? It is the conscious and concerted effort of all stakeholders to at all times act in accord with their respective mandates.*

*The policy making body, the regulator and all relevant government entities must work in unison and ensure that their duties are faithfully performed. Industry players must fully comply with their corporate, environmental and social obligations without sacrificing compliance with regulatory standards.*

*At the end of the day, regardless of our affiliation, we are all consumers. Filling the missing link will work to our advantage because if we fail individually, we fail as a whole. A miss is as good as a mile.*

*This publication is a product of the resourcefulness and hardwork of the DOE Legal Services, and the hope is that this project will serve its avowed purpose of providing everyone the necessary information as to the legal aspect of energy development in the Philippines.*

  
**CARON AICITEL E. LASCANO**



# TABLE OF CONTENTS

## PROJECT PROFILE/HISTORY

- i. FOREWORD BY THE SECRETARY
- ii. PREFACE BY THE ASSISTANT SECRETARY FOR LEGAL SERVICES

## VOLUME 4A ELECTRIC POWER INDUSTRY

### CHAPTER I. ELECTRIC POWER INDUSTRY REFORMS

<b>A. REPUBLIC ACT NO. 9136</b>	<b>1</b>
AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES	
○ RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9136, ENTITLED “ELECTRIC POWER INDUSTRY REFORM ACT OF 2001”	<b>36</b>
○ RULES AND REGULATIONS IMPLEMENTING SECTION 28 OF REPUBLIC ACT NO. 9136	<b>115</b>
✓ AMENDMENTS TO SECTION 4(E) OF RULE 3 AND SECTION 7 OF RULE 18 OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9136	<b>117</b>
➤ DEPARTMENT CIRCULAR NO. 2004-01-001	<b>119</b>
➤ DEPARTMENT CIRCULAR NO. 2005-12-011	<b>125</b>
<b>B. PRESIDENTIAL DECREE NO. 40</b>	<b>133</b>
ESTABLISHING BASIC POLICIES FOR THE ELECTRIC POWER INDUSTRY	
➤ EXECUTIVE ORDER NO. 215	<b>134</b>
○ ENERGY REGULATIONS NO. 1-95	<b>136</b>
○ DEPARTMENT CIRCULAR NO. 97-01-001	<b>163</b>
○ DEPARTMENT CIRCULAR NO. 2000-03-004	<b>167</b>
<b>C. WHOLESALE ELECTRICITY SPOT MARKET</b>	<b>171</b>
➤ DEPARTMENT CIRCULAR NO. 2002-06-003	<b>171</b>
➤ AMENDMENTS TO WESM RULES	<b>172</b>
○ DEPARTMENT CIRCULAR NO. 2004-07-008	<b>350</b>
○ DEPARTMENT CIRCULAR NO. 2005-11-010	<b>353</b>
○ DEPARTMENT CIRCULAR NO. 2006-01-0001	<b>359</b>
○ DEPARTMENT CIRCULAR NO. 2006-05-0006	<b>368</b>
○ DEPARTMENT CIRCULAR NO. 2006-07-0010	<b>369</b>
○ DEPARTMENT CIRCULAR NO. 2006-11-0013	<b>371</b>
○ DEPARTMENT CIRCULAR NO. 2010-03-0004	<b>374</b>
○ DEPARTMENT CIRCULAR NO. 2010-07-0008	<b>376</b>

➤	DEPARTMENT CIRCULAR NO. 2005-11-008	378
➤	DEPARTMENT CIRCULAR NO. 2005-11-009	379
➤	DEPARTMENT CIRCULAR NO. 2006-06-0009	381
➤	DEPARTMENT CIRCULAR NO. 2010-05-0006	384
➤	DEPARTMENT CIRCULAR NO. 2010-06-0007	387
D.	DEPARTMENT CIRCULAR NO. 2004-06-006	390
E.	DEPARTMENT CIRCULAR NO. 2005-06-005	394
<b>CHAPTER II. RURAL POWER PROJECTS</b>		
A.	ENERGY REGULATIONS NO. 1-94	397
	RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE “DEPARTMENT OF ENERGY ACT OF 1992”	
	❑ ENERGY REGULATION NO. 1-94-A	410
	❑ DEPARTMENT CIRCULAR NO. 2000-03-003	412
	❑ DILG AND DOE JOINT CIRCULAR NO. 95-01	421
	❑ DEPARTMENT CIRCULAR NO. 95-11-009	424
	❑ DEPARTMENT CIRCULAR NO. 96-08-009	429
	❑ DEPARTMENT CIRCULAR NO. 98-11-010	431
	➤ COA DECISION NO. 2002—240	432
	❑ DEPARTMENT CIRCULAR NO. 2000-10-011	435
B.	EXECUTIVE ORDER NO. 119	438
	RESTRUCTURING PROGRAM FOR ELECTRIC COOPERATIVES	
C.	DEPARTMENT CIRCULAR NO. 2004-06-007	442
D.	ERC RESOLUTION NO. 22, Series of 2006	446
	❑ IRR OF ERC RESOLUTION NO. 22	447
<b>CHAPTER III. ENERGY EFFICIENCY AND CONSERVATION</b>		
A.	REPUBLIC ACT NO. 7648	457
	AN ACT PRESCRIBING URGENT RELATED MEASURES NECESSARY AND PROPER TO EFFECTIVELY ADDRESS THE ELECTRIC POWER CRISIS AND FOR OTHER PURPOSES	
B.	ADMINISTRATIVE ORDER NO. 103	459
C.	ADMINISTRATIVE ORDER NO. 110	462
	AMENDING ADMINISTRATIVE ORDER NO. 110 S. 2004 DIRECTING THE INSTITUTIONALIZATION OF A GOVERNMENT ENERGY MANAGEMENT PROGRAM (GEMP)	



<ul style="list-style-type: none"> <li><input type="checkbox"/> ADMINISTRATIVE ORDER NO. 110-A</li> <li> <ul style="list-style-type: none"> <li>➤ IRR Directing the Institutionalization of a Government Energy Management Program (GEMP)</li> </ul> </li> </ul>	464
D. MEMORANDUM ORDER NO. 185	474
E. ADMINISTRATIVE ORDER NO. 183	475
F. DEPARTMENT CIRCULAR NO. 2003-12-011	477
<ul style="list-style-type: none"> <li><input type="checkbox"/> DEPARTMENT CIRCULAR NO. 2004-02-002</li> <li><input type="checkbox"/> DEPARTMENT CIRCULAR NO. 2008-06-0003</li> <li><input type="checkbox"/> DEPARTMENT CIRCULAR NO. 2009-01-0001</li> <li><input type="checkbox"/> DEPARTMENT CIRCULAR NO. 2010-03-0003</li> </ul>	479 482 485 490
G. DEPARTMENT CIRCULAR NO. 2004-05-005	493
<b>CHAPTER IV. NATIONAL POWER CORPORATION</b>	
A. COMMONWEALTH ACT NO. 120	499
AN ACT CREATING THE "NATIONAL POWER CORPORATION," PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR, AND RESERVING THE UNAPPROPRIATED PUBLIC WATERS FOR ITS USE	
B. REPUBLIC ACT NO. 6395	503
AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION	
<ul style="list-style-type: none"> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 380</li> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 395</li> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 758</li> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 938</li> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 1360</li> <li><input type="checkbox"/> PRESIDENTIAL DECREE NO. 1443</li> </ul>	514 520 521 522 526 532
C. ADMINISTRATIVE ORDER NO. 381	533
PROVIDING FOR THE FULFILLMENT BY THE NATIONAL POWER CORPORATION OF ITS OBLIGATIONS UNDER THE AGREEMENT FOR THE SALE AND PURCHASE OF NATURAL GAS DATED DECEMBER 30, 1997 WITH SHELL PHILIPPINES EXPLORATION B.V./OCCIDENTAL PHILIPPINES, INC. AND THE COMPLIANCE OF THE NATIONAL GOVERNMENT, THROUGH THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF ENERGY WITH ITS PERFORMANCE UNDERTAKING THEREFOR AND OTHER PURPOSES	
D. EXECUTIVE ORDER NO. 473	537
PROVIDING FOR THE SEGREGATION AND UNBUNDLING OF ELECTRICAL POWER TARIFF COMPONENTS OF THE NATIONAL POWER CORPORATION AND THE FRANCHISED ELECTRIC UTILITIES	

**E. EXECUTIVE ORDER NO. 370 538**

AUTHORIZING AND APPROVING THE DIRECT ASSUMPTION BY THE NATIONAL GOVERNMENT OF A PORTION OF THE FINANCIAL OBLIGATIONS OF THE NATIONAL POWER CORPORATION IN ACCORDANCE WITH SECTION 32 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

**CHAPTER V. NATIONAL ELECTRIFICATION ADMINISTRATION**

**A. REPUBLIC ACT NO. 2717 541**

AN ACT TO CREATE THE ELECTRIFICATION ADMINISTRATION, AND OTHER PURPOSES

**B. REPUBLIC ACT NO. 6038 544**

AN ACT DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, PROVIDING FOR THE ORGANIZATION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATION, THE REPEAL OF R.A. NO. 2717, AND FOR OTHER PURPOSES

**C. PRESIDENTIAL DECREE NO. 269 566**

CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES

**PRESIDENTIAL DECREE NO. 1370 597**

**PRESIDENTIAL DECREE NO. 1645 598**

**CHAPTER VI. OTHER RELATED LAWS AND ISSUANCES IN ELECTRIC POWER INDUSTRY**

**A. REPUBLIC ACT NO. 1815 603**

AN ACT TO CREATE THE PHILIPPINE NUCLEAR ENERGY COMMISSION TO ADMINISTER, REGULATE, AND CONTROL THE USE, APPLICATION, AND DISPOSITION OF FISSIONABLE MATERIALS; TO AUTHORIZE THE ESTABLISHMENT AND ADMINISTRATION OF AN ATOMIC ENERGY REACTOR; TO DETERMINE THE MANNER OF DEVELOPMENT, USE AND CONTROL OF ATOMIC ENERGY, TO PROVIDE FUNDS THEREFOR, AND FOR OTHER PURPOSES

**B. REPUBLIC ACT NO. 7832 606**

AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF AND FOR OTHER PURPOSES

□	<b>IRR OF REPUBLIC ACT NO. 7832</b>	<b>613</b>
<b>C.</b>	<b>ERB RESOLUTION NO. 95-21</b>	<b>624</b>
	STANDARD RULES AND REGULATIONS GOVERNING THE OPERATION OF ELECTRIC POWER SERVICES	
<b>D.</b>	<b>REPUBLIC ACT NO. 9511</b>	<b>636</b>
	AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES	
<b>E.</b>	<b>REPUBLIC ACT NO. 10150</b>	<b>641</b>
	AN ACT EXTENDING THE IMPLEMENTATION OF THE LIFELINE RATE, AMENDING FOR THE PURPOSE SECTION 73 OF REPUBLIC ACT NUMBERED NINETY-ONE THIRTY-SIX, OTHERWISE KNOWN AS THE “ELECTRIC POWER INDUSTRY REFORM ACT OF 2001”	
<b>CHAPTER VII.</b>		
	<b>ELECTRIC POWER INDUSTRY CASES</b>	<b>643</b>
✓	Decision – G.R. No. 127373. March 25, 1999 Energy Regulatory Board and Iligan Light & Power, Inc., vs. Court of Appeals and Association of Mindanao Industries	<b>643</b>
✓	Decision – G.R. No. 135925. December 22, 2004, BATELEC II Electric Cooperative Inc., vs. Energy Industry Administration Bureau, Puyat Steel Corp. and National Power Corp.	<b>650</b>
✓	Decision – G.R. No. 159796. July 17, 2007 Romeo P. Gerochi et al. vs. DOE et al.	<b>658</b>
✓	Decision – G.R. No. 176935-36. March 13, 2009 Zambales II Electric Cooperative, Inc. Board of Directors vs. Castillejos Consumers Association, Inc. (CASCONA)	<b>668</b>
✓	Decision – G.R. No. 180345. November 25, 2009, San Roque Power Corp. vs. Commissioner of Internal Revenue	<b>678</b>
✓	Decision – G.R. No. 172960. March 26, 2010, Mactan Electric Company, Inc. vs. NAPOCOR et al.	<b>690</b>
	<b>APPENDICES</b>	<b>699</b>

# Chapter I

## Electric Power Industry Reforms

### REPUBLIC ACT NO. 9136

AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES

---

#### CHAPTER I

##### TITLE AND DECLARATION OF POLICY

- SECTION 1. *Short Title.* – This Act shall be known as the “Electric Power Industry Reform Act of 2001”. It shall hereinafter be referred to as the “Act”.
- SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State:
- (a) To ensure and accelerate the total electrification of the country;
  - (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
  - (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
  - (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
  - (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
  - (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
  - (g) To assure socially and environmentally compatible energy sources and infrastructure;
  - (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
  - (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
  - (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
  - (k) To encourage the efficient use of energy and other modalities of demand side management.

SEC. 3. *Scope.* – This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.

SEC. 4. *Definition of Terms.* –

- (a) “Aggregator” refers to a person or entity, engaged in consolidating electric power demand of end-users in the contestable market, for the purpose of purchasing and reselling electricity on a group basis;
- (b) “Ancillary Services” refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act;
- (c) “Captive Market” refers to electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the Energy Regulatory Commission (ERC) in accordance with this Act;
- (d) “Central Dispatch” refers to the process of issuing direct instructions to electric power industry participants by the grid operator to achieve the economic operation and maintenance of quality, stability, reliability and security of the transmission system;
- (e) “Co-Generation Facility” refers to a facility which produces electrical an/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial commercial heating or cooling purposes through the sequential use of energy;
- (f) “Commission” refers to the decision-making body of the ERC composed of

a Chairman and four (4) members as provided under Section 38 hereof;

- (g) “Concession Contract” refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned assets;
- (h) “Contestable Market” refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with this Act;
- (i) “Customer Service Charge” refers to the component in the retail rate intended for the cost recovery of customer-related services including, but not limited to, meter reading, billing administration and collection;
- (j) “Demand Side Management” refers to measures undertaken by distribution utilities to encourage end-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;
- (k) “Department of Energy” or “DOE” refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided herein;
- (l) “Department of Finance” or “DOF” refers to the government agency created pursuant to Executive Order No. 127;
- (m) “Distribution Code” refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their distribution systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

- (n) “Distribution of Electricity” refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions of this Act;
- (o) “Distribution System” refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-user;
- (p) “Distribution Wheeling Charge” refers to the cost or charge regulated by the ERC for the use of a distribution system and/or the availment of related services;
- (q) “Distribution Utility” refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with this Act;
- (r) “Electric cooperative” refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this Act;
- (s) “Electric Power Industry Participant” refers to any person or entity engaged in the generation, transmission, distribution or supply of electricity;
- (t) “End-user” refers to any person or entity requiring the supply and delivery of electricity for its own use;
- (u) “Energy Regulatory Board” or “ERB” refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;
- (v) “Energy Regulatory Commission” or “ERC” refers to the regulatory agency created herein;
- (w) “Franchise Area” refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity;
- (x) “Generation Company” refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;
- (y) “Generation of Electricity” refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of this Act;
- (z) “Grid” refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities;
- (aa) “Grid Code” refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;
- (bb) “Independent Power Producer” or “IPP” refers to an existing power generating entity which is not owned by NPC;
- (cc) “Inter-Class Cross Subsidy” refers to an amount charged by distribution utilities to industrial and commercial end-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors such as the residential end-users, hospitals, and streetlights;
- (dd) “Inter-Regional Grid Cross Subsidy” refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;
- (ee) “Intra-Regional Grid Cross Subsidy” refers to an amount embedded in the electricity rates of NPC charged to distribution utilities and non-utilities with higher load

factor and/or delivery voltage in order to reduce the electricity rates charged to distribution utilities with lower load factor and/or delivery voltage located in the same regional grid;

(ff) “IPP Administrator” refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve and manage the contracted energy output of NPC IPP contracts;

(gg) “Isolated Distribution System” refers to the backbone system of wires and associated facilities not directly connected to the national transmission system;

(hh) “Lifeline Rate” refers to the subsidized rate given to low-income captive market end-users who cannot afford to pay at full cost;

(ii) “National Electrification Administration” or “NEA” refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth herein;

(jj) “National Power Corporation” or “NPC” refers to the government corporation created under Republic Act No. 6395, as amended;

(kk) “National Transmission Corporation” or “TRANSCO” refers to the corporation organized pursuant to this Act to acquire all the transmission assets of the NPC;

(ll) “Open Access” refers to the system of allowing any qualified person the use of transmission, and/or distribution system, and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC;

(mm) “Philippine Energy Plan” or “PEP” refers to the overall energy program formulated and updated yearly by the

DOE and submitted to Congress pursuant to Republic Act No. 7638;

(nn) “Power Development Program” or “PDP” refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and distribution utility companies;

(oo) “Power Sector Assets and Liabilities Management Corporation” or “PSALM Corp.” refers to the corporation created pursuant to Section 49 hereof;

(pp) “Privatization” refers to the sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private person or entity;

(qq) “Renewable Energy Resources” refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;

(rr) “Restructuring” refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and end-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;

(ss) “Retail Rate” refers to the total price paid by end-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service;

- (tt) “Small Power Utilities Group” or “SPUG” refers to the functional unit of NPC created to pursue missionary electrification function;
- (uu) “Stranded contract costs of NPC or distribution utility” 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. Such contracts shall have been approved by the ERB as of December 31, 2000;
- (vv) “Stranded Debts of NPC” refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets;
- (ww) “Subtransmission Assets” refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of assets including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land such facilities/equipment are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation nor transmission;
- (xx) “Supplier” refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;
- (yy) “Supplier’s Charge” refers to the charge imposed by electricity suppliers for the sale of electricity to end-users, excluding the charges for generation, transmission and distribution wheeling;
- (zz) “Supply of Electricity” means the sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;
- (aaa) “Transmission Charge” refers to the regulated cost or charges for the use of a transmission system which may include the availment of ancillary services;
- (bbb) “Transmission Development Plan” or “TDP” refers to the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and implemented by the TRANSCO pursuant to this Act;
- (ccc) “Transmission of Electricity” refers to the conveyance of electricity through the high voltage backbone system; and
- (ddd) “Universal Charge” refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.

## CHAPTER II

### ORGANIZATION AND OPERATION OF THE ELECTRIC POWER INDUSTRY

SEC. 5. *Organization.* – The electric power industry shall be divided into four (4) sectors, namely: generation, transmission, distribution and supply.

SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered



a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

**SEC. 7. *Transmission Sector.*** –The transmission of electric power shall be regulated common electricity carrier business, subject to the ratemaking powers of the ERC.

The ERC shall set the standards of the voltage transmission that shall distinguish the transmission from the subtransmission assets. Pending the issuance of such new standards, the distinction between the transmission and subtransmission assets shall be as follows: 230 kilovolts and above in the Luzon grid, 69 kilovolts and above in the Visayas and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao Grid: *Provided*, That for the Visayas and the isolated distribution system, should the 69 kilovolt line not form part of the main transmission grid and be directly connected to the substation of the distribution utility, it shall form part of the subtransmission system.

**SEC. 8. *Creation of the National Transmission Company.*** – There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the

National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.

The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets.

All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: *Provided*, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however*, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the

net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

SEC. 9. *Functions and Responsibilities.* – Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

- (a) Act as the system operator of the nationwide electrical transmission and subtransmission system, to be transferred to it by NPC;
- (b) Provide open and non-discriminatory access to its transmission system to all electricity users;
- (c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operations and maintenance of the grid, as set forth in a Grid Code to be adopted and promulgated by the ERC within six (6) months from the effectivity of this Act;
- (d) Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided, That* TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;
- (e) Subject to technical constraints, the grid operator of the TRANSCO shall provide central dispatch of all generation facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the market operator, taking into account outstanding bilateral contracts; and
- (f) TRANSCO shall undertake the preparation of the TDP.

In the preparation of the TDP, TRANSCO shall consult the other participants of the electric power industry such as the generation companies, distribution utilities, and the electricity end-users. The TDP shall

be submitted to the DOE for integration with the Power Development Program and the Philippine Energy Plan, provided for in Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992”.

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: *Provided*, That such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC: *Provided, further*, That 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: *Provided, finally*, That in the case of disagreement on the fair market price, the ERC shall determine the fair market value of the asset.

SEC. 10. *Corporate Powers of the TRANSCO.* – As a corporate entity, TRANSCO shall have the following corporate powers:

- (a) To have continuous succession under its corporate name until otherwise provided by law;
- (b) To adopt and use a corporate seal and to change, alter or modify the same, if necessary;
- (c) To sue and be sued;
- (d) To enter into a contract and execute any instrument necessary or convenient for the purpose for which it is created;
- (e) To borrow funds from any source, whether private or public, foreign or domestic, and issue bonds and other evidence of indebtedness: *Provided*, That in the case of the bond issues, it shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance: *Provided, further*, That foreign loans shall be obtained in accordance with existing laws, rules and

regulations of the Bangko Sentral ng Pilipinas;

- (f) To maintain a provident fund which consists of contributions made by both the TRANSCO and its officials and employees and their earnings for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;
- (g) To do any act necessary or proper to carry out the purpose for which it is created, or which, from time to time, may be declared by the TRANSCO Board as necessary, useful, incidental or auxiliary to accomplish its purposes and objectives; and
- (h) Generally, to exercise all the powers of a corporation under the corporation law insofar as they are not inconsistent with this Act.

SEC. 11. *TRANSCO Board of Directors.* – All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the *ex officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President, each representing Luzon, Visayas and Mindanao.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance, economics, law or business management. No member of the Board or any of his relatives

within the fourth civil degree of consanguinity or affinity shall have any interest, either as investor, officer or director, in any generation company or distribution utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC.

SEC. 12. *Powers and Duties of the Board.* – The following are the powers of the Board:

- (a) To provide strategic direction for TRANSCO, and formulate medium and long-term strategies pursuant to the vision, mission, and objectives of TRANSCO;
- (b) To develop and adopt policies and measures for the efficient and effective management and operation of TRANSCO;
- (c) To organize, re-organize, and determine the organizational structure and staffing patterns of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits;
- (d) To fix the compensation of the President of TRANSCO and to appoint and fix the compensation of other corporate officers;
- (e) For cause, to suspend or remove any corporate officer appointed by the Board;
- (f) To adopt and set guidelines for the employment of personnel on the basis of merit, technical competence, and moral character; and
- (g) Any provisions of the law to the contrary notwithstanding, to write-off bad debts.

SEC. 13. *Board Meetings.* – The Board shall meet as often as may be necessary upon the call of the Chairman of the Board or by a majority of the Board members.

SEC. 14. *Board Per Diems and Allowances.* – The members of the Board shall receive *per diem* for each regular or special meeting of the board actually attended by them, and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe.

SEC. 15. *Quorum.* – The presence of at least four (4) members of the Board shall constitute a quorum, which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present in a quorum shall be adequate for the approval of any resolution, decision or order, except when the Board shall otherwise agree that a greater vote is required.

SEC. 16. *Powers of the President of TRANSCO.* – The President of TRANSCO shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over board meetings.

The President of TRANSCO shall be the Chief Executive Officer of TRANSCO and shall have the following powers and duties:

- (a) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
- (b) To oversee the preparation of the budget of TRANSCO;
- (c) To direct and supervise the operation and internal administration of TRANSCO and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of TRANSCO;
- (d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of TRANSCO; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of TRANSCO;

- (e) To submit an annual report to the Board on the activities and achievements of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;
- (f) To represent TRANSCO in all dealings and transactions with other offices, agencies, and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and
- (g) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 17. *Exemption from the Salary Standardization Law.* – The salaries and benefits of employees in the TRANSCO shall be exempt from Republic Act No. 6758 and shall be fixed by the TRANSCO Board.

SEC. 18. *Profits.* – The net profit, if any, of TRANSCO shall be remitted to the PSALM Corp. not later than ninety (90) days after the immediately preceding quarter.

SEC. 19. *Transmission Charges.* – The transmission charges of the TRANSCO shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC. 20. *TRANSCO Related Businesses.* – TRANSCO may engage in any related business which maximizes utilization of its assets: *Provided,* That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce transmission wheeling rates as determined by the ERC. Such portion of net income used to reduce the transmission wheeling rates shall not exceed fifty percent (50%) of the net income derived from such undertaking.

Separate accounts shall be maintained for each business undertaking to ensure that the

transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.

SEC. 21. *TRANSCO Privatization.* – Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

In any case, the awardee shall comply with the Grid Code and the TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines.

SEC. 22. *Distribution Sector.* – The distribution of electricity to end-users shall be a regulated

common carrier business requiring a national franchise. Distribution of electric power to all end-users may be undertaken by private distribution utilities, cooperatives, local government units presently undertaking this function and other duly authorized entities, subject to regulation by the ERC.

SEC. 23. *Functions of Distribution Utilities.* – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the Distribution Code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.

Any distribution utility shall be entitled to impose and collect distribution wheeling charges and connection fees from such end-users as approved by the ERC.

A distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate duly approved by the ERC.

To achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act.

Distribution utilities shall submit to the ERC a statement of their compliance with the technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR of this Act. Distribution utilities which do not comply with any of the prescribed technical specifications and performance standards shall submit to the ERC a plan to comply, within three (3) years, with said prescribed technical specifications and performance

standards. The ERC shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the distribution utility concerned of its action. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

Distribution utilities shall prepare and submit to the DOE their annual distributions developments plans. In the case of electric cooperatives, such plans shall be submitted through the National Electrification Administration.

Distribution utilities shall provide universal service within their franchise, over a reasonable time from the requirement thereof, including unviable areas, as part of their social obligations, in a manner that shall sustain the economic viability of the utility, subject to the approval by the ERC in the case of private or government-owned utilities. To this end, distribution utilities shall submit to the DOE their plans for serving such areas as part of their distribution development plans. Areas which a franchised distribution utility cannot or does not find viable may be transferred to another distribution utility, if any is available, who will provide the service, subject approval by ERC. In cases where franchise holders fail and/or refuse to service any area within their franchise territory and allowed another utility to service the same, then the status quo shall be respected.

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

SEC. 24. *Distribution Wheeling Charge.* – The distribution wheeling charges of distribution utilities shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC. 25. *Retail Rate.* – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be

subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

Every distribution utility shall identify and segregate in its bills to end-users the components of the retail rate, as defined in this Act.

**SEC. 26. *Distribution Related Businesses.*** – Distribution utilities may, directly or indirectly, engage in any related business undertaking which maximizes the utilization of their assets: *Provided*, That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC. *Provided, further*, That such portion of net income used to reduce their distribution wheeling charges shall not exceed fifty percent (50%) of the net income derived from such undertaking: *Provided, finally*, That separate accounts are maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.

**SEC. 27. *Franchising Power in the Electric Power Sector.*** – The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the “National Electrification Decree”, are hereby deemed repealed or modified accordingly: *Provided*, That all existing franchises shall be allowed to their full term: *Provided, further*, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

**SEC. 28. *De-Monopolization and Shareholding Dispersal.*** – In compliance with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): *Provided*, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to or less than Ten megawatts (10 MW).

The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.

This Section shall not apply to electric cooperatives.

**SEC. 29. *Supply Sector.*** – The supply sector is a business affected with public interest. Except for distribution utilities and electric cooperatives with respect to their existing franchise areas, all suppliers of electricity to the contestable market shall require a license from the ERC.

For this purpose, the ERC shall promulgate rules and regulations prescribing the qualifications of electricity suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness: *Provided*, That the ERC shall have authority to require electricity suppliers to furnish a bond or other evidence of the ability of a supplier to withstand market disturbances or other

events that may increase the cost of providing service.

Any law to the contrary notwithstanding, supply of electricity to the contestable market shall not be considered a public utility operation. For this purpose, any person or entity which shall engage in the supply of electricity to the contestable market shall not be required to secure a national franchise.

The prices to be charged by suppliers for the supply of electricity to the contestable market shall not be subject to regulation by the ERC.

Electricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be promulgated by the ERC.

In its billings to end-users, every supplier shall identify and segregate the components of its supplier's charge, as defined herein.

**SEC. 30. Wholesale Electricity Spot Market.** – Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC. Said rules shall also reflect accepted economic principles and provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:

- (a) Establishing the merit order dispatch instructions for each time period;
- (b) Determining the market-clearing price for each time period;
- (c) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the wholesale electricity spot market governing body;
- (d) Prescribing guidelines for the market operation in system emergencies; and
- (e) Amending the rules.

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease.

Subject to the compliance with the membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.



The ERC may authorize other similar entities to become eligible as members, either directly or indirectly, of the wholesale electricity spot market. All generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC, whether direct or indirect members of the wholesale electricity spot market, shall be bound by the wholesale electricity spot market rules with respect to transactions in that market.

NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the wholesale electricity spot market by any electric cooperative or small distribution utility to support their credit standing consistent with the provisions hereof. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen billion pesos (P 15,000,000,000.00).

All electric cooperatives which have outstanding uncollected billings to any local government unit shall report such billings to NEA which shall, in turn, report the same to the Department of Budget and Management (DBM) for collection pursuant to Executive Order 190 issued on December 21, 1999.

The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: *Provided*, That such charge shall be filed with and approved by the ERC.

In cases of national and international security emergencies or natural calamities, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure.

SEC. 31. *Retail Competition and Open Access.* – Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be

implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

- (a) Establishment of the wholesale electricity spot market;
- (b) Approval of unbundled transmission and distribution wheeling charges;
- (c) Initial implementation of the cross subsidy removal scheme;
- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750 kW). At this level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years upon the effectivity of this Act.

SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* – Stranded debt of NPC shall refer to any unpaid financial obligations of NPC.

Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

The national government shall directly assume a portion of the financial obligations of NPC in an amount not to exceed Two hundred billion pesos (P 200,000,000,000,00)

The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein: *Provided*, That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conducts a review to determine whether there is under-recovery or over-recovery and adjust (tune-up) the level of stranded cost recovery charge accordingly. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

**SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.*** – Stranded contract costs of distribution utilities shall refer to the excess of the contracted cost of electricity under eligible contracts of such utilities over the actual selling price of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

A distribution utility shall recover stranded contract costs: *Provided, however*, That such costs of the IPPs of distribution utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC at the time they were contracted. The ERC shall take into consideration all factors that affect the total

cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.

Within one (1) year from the start of open access, any distribution utility that seeks recovery of stranded contract costs shall file with the ERC notice of such intent together with an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC. Any distribution utility that does not file within the date specified shall not be eligible for such recovery.

Any distribution utility which seeks to recover stranded cost shall have a duty to mitigate its potential stranded contract costs by making reasonable best efforts to:

- (a) reduce the costs of its existing contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and
- (b) submit to an annual earnings review by the ERC and use its earnings above its authorized rate of return to reduce the book value of contracts until the end of the stranded cost recovery period.

Other mitigating measures which are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the distribution utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.

The relevant distribution utility shall submit to the ERC quarterly reports showing the amount of stranded costs recovered and the balance remaining to be recovered.

Within three (3) months from the submission of the application for stranded cost recovery by the relevant distribution utilities, the ERC shall verify the reasonable amounts and determine the manner and duration for the

full recovery of stranded contract costs as defined herein: *Provided*, That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conduct a review to determine whether there is under-recovery or over recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund created under Section 34 hereof. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.

SEC. 34. *Universal Charge*. – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

- (a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
- (b) Missionary electrification;
- (c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
- (d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-

hour (P 0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

- (e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

SEC. 35. *Royalties, Returns and Tax Rates for Indigenous Energy Resources*. – The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns and taxes collected for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

To ensure lower rates for end-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

SEC. 36. *Unbundling of Rates and Functions.* – Within six (6) months from the effectivity of this Act, NPC shall file with the ERC its revised rates. The rates of NPC shall be unbundled between transmission and generation rates and the rates shall reflect the respective costs of providing each service.

Inter-grid and intra-grid cross subsidies for both the transmission and the generation rates shall be removed in accordance with this Act.

Within six (6) months from the effectivity of this Act, each distribution utility shall file its revised rates for the approval by the ERC. The distribution wheeling charge shall be unbundled from the retail rate and the rates shall reflect the respective costs of providing each service. For both the distribution retail wheeling and supplier’s charges, inter-class subsidies shall be removed in accordance with this Act.

Within six (6) months from the date of submission of revised rates by NPC and each distribution utility, the ERC shall notify the entities of their approval.

Any electric power industry participant shall functionally and structurally unbundle its business activities and rates in accordance with the sectors as identified in Section 5 hereof. The ERC shall ensure full compliance with this provision.

### CHAPTER III

#### ROLE OF THE DEPARTMENT OF ENERGY

SEC. 37. *Powers and Functions of the DOE.* – In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of RA 7638 otherwise known as “The Department of Energy Act of 1992” is hereby amended to read as follows:

(a) Formulate policies for the planning and implementation of a comprehensive

program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as “The Plan”, which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The plan shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: *Provided, however,* That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

- (i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
  - (ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;
  - (iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and
  - (iv) Undertake in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets.
- (f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;
- (g) Establish, administer and regulate programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;
- (h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638;
- (i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;
- (j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided, That* the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;
- (k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;
- (l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;
- (m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;
- (n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;
- (o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of

their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

- (p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and
- (q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.

#### **CHAPTER IV REGULATION OF THE ELECTRIC POWER INDUSTRY**

SEC. 38. *Creation of the Energy Regulatory Commission.* – There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commissions (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided*, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla

positions necessary to carry out the powers and functions of the ERC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: *Provided*, That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; *Provided, further*, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: *Provided, finally*, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office of the beginning of their terms: *Provided*, That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.

The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations.

Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through

sale or legal disposition of any and all interests in the energy sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its quasi-judicial functions: *Provided*, That in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

SEC. 39. *Compensation and Other Emoluments for ERC Personnel.* – The compensation and other emoluments for the Chairman and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the “Salary Standardization Act”. For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided*, That in no case shall the rate be upgraded more than once a year.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.

SEC. 40. *Enhancement of Technical Competence.* – The ERC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the ERC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the ERC to adequately perform its duties and functions.

SEC. 41. *Promotion of Consumer Interests.* – The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

SEC. 42. *Budget of the ERC.* – The amount of One hundred fifty million pesos (P 150,000,000.00) is hereby allocated from the existing budget of the ERB for the initial operation of the ERC. Any balance shall initially be sourced from the Office of the President of the Philippines. Thereafter, the annual budget of the ERC shall be included in the regular or special appropriations.

SEC. 43. *Functions of the ERC.* –The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

- (a) Enforce the implementing rules and regulations of this Act;
- (b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:
  - (i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities and suppliers: *Provided*,

That in the establishment of the performance standards, the nature and function of the entities shall be considered; and

- (ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided, further,* That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof.
- (c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;
- (d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;
- (e) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but in no case exceed twelve (12) months from the issuance of the order;
- (f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of

the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

- (i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
- (ii) Interest expenses are not allowable deductions from permissible return on rate base;
- (iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and



distribution utilities including systems losses, interruption frequency rates, and collection efficiency;

- (iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by force majeure, penalties and related interest during construction applicable to these unexcused delays; and
- (v) Any significant operating costs or project investments of the TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.
- (g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;
- (h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;
- (i) Allow the TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;
- (j) Set a lifeline rate for the marginalized end-users;
- (k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;
- (l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;
- (m) Take any other action delegated to it pursuant to this Act;
- (n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;
- (o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;
- (p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in

appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

- (q) Act on applications for cost recovery and return on demand side management projects;
- (r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;
- (s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;
- (t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: *Provided, however,* That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For

existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

- (u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

SEC. 44. *Transfer of Powers and Functions.* – The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* – No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

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, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, 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 concessionaire shall be an officer or director of any generation company, distribution utility or supplier.

An “affiliate” means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

- (a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. “Related group” includes a person’s business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;
- (b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: *Provided*, That such review shall only be required for distribution utilities whose markets have

not reached household demand level. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

- (c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid or as conditions may otherwise permit.

Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. Except as otherwise provided for in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations to ensure and promote

competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall define the following:

- (a) the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;
- (b) areas of isolated grids; and
- (c) the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard.

**SEC. 46. *Fines and Penalties.*** – The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with this Act or the IRR shall range from a minimum of fifty thousand pesos (P 50,000.00) to a maximum of Fifty million pesos (P 50,000,000.00).

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of *prision mayor* and fine ranging from Ten thousand pesos (P 10,000.00) to Ten million pesos (P 10,000,000.00), or both, at the discretion of the court.

The members of the Board of Directors of the juridical companies participating in or covered in the generation companies, the distribution utilities, the TRANSCO or its concessionaire or supplier who violate the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment of one (1) year or two (2) years or both at the discretion of the court. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.

To ensure compliance with this Act, the penalty of *prision correccional* or a fine ranging from Five thousand pesos (P 5,000.00) to Five million pesos (P 5,000,000.00), or both, at the discretion of the court, shall be imposed on any person, including but not limited to

the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.

In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions of this Act.

## CHAPTER V

### PRIVATIZATION OF THE ASSETS OF THE NATIONAL POWER CORPORATION

SEC. 47. *NPC Privatization.* – Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act.

Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

- (a) The privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;
- (b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged:

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

- (c) The NPC plants and/or IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

- (1) A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units;
- (2) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;
- (3) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or of the load curve; and

- (4) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.
- (d) All assets of NPC shall be sold in an open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;
- (e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;
- (f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;
- (g) The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;
- (h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;
- (i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and
- (ii) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

SEC. 48. *National Power Board of Directors.*  
 – Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of R.A. 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

**CHAPTER VI**  
**POWER SECTOR ASSETS AND LIABILITIES**  
**MANAGEMENT**

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* – There is hereby created a government-owned and -controlled corporation to be known as the “Power Sector Assets and Liabilities Management Corporation”, hereinafter referred to as the “PSALM Corp.”, which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* – The principal purpose of the PSALM Corp. 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 manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

SEC. 51. *Powers.* – The Corporation shall, in the performance of its functions and for the attainment of its objective, have the following powers:

(a) To formulate and implement a program for the sale and privatization of the

NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;

- (b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;
- (c) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administrators in accordance with this Act;
- (d) To 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;
- (e) To liquidate the NPC stranded contract costs utilizing proceeds from sales and other property contributed to it, including the proceeds from the universal charge;
- (f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;
- (g) To sue and be sued in its name;
- (h) To appoint or hire, transfer, remove and fix the compensation of its personnel: *Provided, however,* That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;
- (i) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

- (j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however,* That all such debts or borrowings shall have been paid off before the end of its corporate life;
- (k) To restructure existing loans of NPC;
- (l) To collect, administer, and apply NPC's portion of the universal charge; and
- (m) To restructure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets.

SEC. 52. *Power Sector Assets and Liabilities Management Corporation, Meetings, Quorum and Voting.* – The Corporation shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of Finance as the Chairman, the Secretary of Budget and Management, the Secretary of the Department of Energy, the Director-General of the National Economic and Development Authority, the Secretary of the Department of Justice, the Secretary of the Department of Trade and Industry and the President of the PSALM Corp. as *ex officio* members thereof.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.

SEC. 53. *Powers of the President of PSALM Corp.* – The President of PSALM Corp. shall be

appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over Board meetings.

The PSALM Corp. President shall be the Chief Executive Officer of PSALM Corp. and shall have the following powers and duties:

- (a) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
- (b) To oversee the preparation of the budget of PSALM Corp.;
- (c) To direct and supervise the operation and internal administration of PSALM Corp. and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of PSALM Corp.;
- (d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of PSALM Corp.; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of PSALM Corp.;
- (e) To submit an annual report to the Board on the activities and achievements of PSALM Corp. at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;
- (f) To represent PSALM Corp. in all dealings and transactions with other offices, agencies, and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and
- (g) To exercise such other powers and duties as may be vested in him by the Board from time to time.



SEC. 54. *Exemption from the Salary Standardization Law.* – The salaries and benefits of employees in the PSALM Corp. shall be exempt from Republic Act No. 6758 and shall be fixed by the PSALM Corp. Board.

SEC. 55. *Property of the PSALM Corp.* – The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

- (a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;
- (b) Transfers from the National Government;
- (c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided, however,* That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;
- (d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;
- (e) Net profit of NPC;
- (f) Net profit of TRANSCO;
- (g) Official assistance, grants, and donations from external sources; and
- (h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

SEC. 56. *Claims Against the PSALM Corp.* – The following shall constitute the claims against the PSALM Corp.:

- (a) NPC liabilities transferred to the PSALM Corp.;
- (b) Transfers from the national government;

- (c) New loans; and
- (d) NPC stranded contract costs.

## CHAPTER VII

### PROMOTION OF RURAL ELECTRIFICATION

SEC. 57. *Conversion of Electric*

*Cooperatives.* – Electric cooperatives are hereby given the option to convert into either stock cooperative under the *Cooperatives Development Act* or stock corporation under the *Corporation Code*. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under Presidential Decree No. 269, as amended, and other existing laws.

SEC. 58. *Additional Mandate of the National Electrification Administration (NEA).* – NEA shall develop and implement programs:

- (a) To prepare electric cooperatives in operating and competing under the deregulated electric market within five (5) years from the effectivity of this Act, specifically in an environment of open access and retail wheeling;
- (b) To strengthen the technical capability and financial viability of rural electric cooperatives; and
- (c) To review and upgrade regulatory policies with a view to enhancing the viability of rural electric cooperatives as electric utilities.

NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act.

SEC. 59. *Alternative Electric Service for Isolated Villages.* – The provision of electric service in remote and unviable villages that the franchised utility is unable to service for

any reason shall be opened to other qualified third parties.

SEC. 60. *Debts of Electric Cooperatives.* – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act.

The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

## **CHAPTER VIII**

### **GENERAL PROVISIONS**

SEC. 61. *Reportorial Requirements.* – The DOE shall take the necessary measures to ensure that the provisions of this Act are properly implemented, and shall submit to the Power Commission a semiannual report on the implementation of this Act, on or before the last week of April and October of each year.

SEC. 62. *Joint Congressional Power Commission.* – Upon the effectivity of this Act, a congressional commission, hereinafter referred to as the “Power Commission”, is hereby constituted. The Power Commission shall be composed of fourteen (14) members with the chairmen of the Committee on Energy of the Senate and the House of Representatives and six (6) additional members from each House, to be designated

by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to *pro rata* representation but shall have at least one (1) representative in the Power Commission.

The Commission shall, in aid of legislation, perform the following functions, among others:

- (a) Set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;
- (b) Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines;
- (c) To ensure transparency, require the submission of reports from government agencies concerned on the conduct of public bidding procedures regarding privatization of NPC generation and transmission assets;
- (d) Review and evaluate the performance of the industry participants in relation to the objectives and timelines set forth in this Act;
- (e) Approve the budget for the programs of the Power Commission and all disbursements therefrom, including compensation of all personnel;
- (f) Submit periodic reports to the President of the Philippines and Congress;
- (g) Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures; and
- (h) Perform such other duties and functions as may be necessary to attain its objectives.

In furtherance hereof, the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. Any person who willfully and deliberately refuses without just cause to extend the support and assistance required by the Power Commission to effectively attain its objectives shall, upon conviction, be punished by imprisonment of not less than one (1) year but not more than six (6) years or a fine of not less than Fifty thousand pesos (P 50,000.00) but not more than Five hundred thousand pesos (P 500,000.00) or both at the discretion of the court.

The Power Commission shall adopt its internal rules of procedures; conduct hearings and receive testimonies, reports and technical advice; invite or summon by subpoena *ad testificandum* any public official, private citizen or any other person to testify before it, or require any person by subpoena *duces tecum* to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Power Commission shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants. The secretariat shall be headed by an executive director who has sufficient background and competence on the policies and issues relating to electricity industry reforms as provided in this Act. To carry out its powers and functions, the initial sum of twenty-five million pesos (P 25,000,000.00) shall be charged against the current appropriations of the Senate. Thereafter, such amount necessary for its continued operation shall be included in the annual *General Appropriations Act*.

The Power Commission shall exist for period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as “The Salary Standardization Act”.

With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

SEC. 64. *Fiscal Prudence.* – To promote the prudent management of government resources, the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of TRANSCO and PSALM Corp. personnel shall be subject to the approval of the President of the

Philippines. The compensation and all other emoluments and benefits of the officials and members of the Board of the TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.

SEC. 65. *Environmental Protection.* – Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the Department of Environment and Natural Resources including, in appropriate cases, the establishment of an environmental guarantee fund.

SEC. 66. *Benefits to Host Communities.* – The obligations of generation companies and energy resource developers to communities hosting energy generating facilities and/or energy resource developers as defined under Chapter II, Sections 289 to 294 of the *Local Government Code* and Section 5(i) of Republic Act No. 7638 and their implementing rules and regulations and applicable orders and circulars consistent with this Act shall continue: *Provided*, That the obligations mandated under Chapter II, Section 291 of Republic Act No. 7160, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

To ensure the effective implementation of the reduction in cost of electricity in the communities where the source of energy is located, the mechanics and procedures prescribed in the Department of the Interior and Local Government (DILG)-DOE Circulars No. 95-01 and 98-01 dated October 31, 1995 and September 30, 1998, respectively and other issuances related thereto shall be pursued.

Towards this end, the fund generated from the eighty percent (80%) of the national wealth tax shall, in no case, be used by any local government unit for any purpose other than those for which it was intended.

In case of any violation or noncompliance by any local government official of any provision thereof, the DILG shall, upon prior notice and hearing, order the project operator, through the DOE, to withhold the remittance of the royalty payment to the host community concerned pending completion of the investigation. The unremitted funds shall be deposited in a government bank under a trust fund.

SEC. 67. *NPC Offer of Transition Supply Contracts.* – Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/or indexation formulas which shall apply to the term of such contracts. The term of the transition supply contracts shall not extend beyond one (1) year from the introduction of open access. Such contracts shall be based on the projected demand of such utilities less any of their currently committed quantities under eligible IPP contracts as defined in Section 33 hereof: *Provided*, That the total generation capacity of such signed transition supply contracts shall not exceed the level of NPC owned, controlled or committed capacity as of the effectivity of this Act. Such transition supply contracts shall be assignable to the NPC successor generating companies.

Within six (6) months from the date of submission of the transition supply contract by NPC, the ERC shall notify NPC of their approval of the rates contained therein.

The ERC shall maintain a record of the contract terms and rates offered by NPC. Likewise, the ERC shall update monthly, the rates using the appropriate adjustment and/or indexation formula.

Notwithstanding the provisions of Section 25 hereof, the rates charged by a distribution utility for the generation component of the

supply of electricity in their distribution retail supply rate shall, for the term of the transition supply contracts, not exceed the transition supply contract rates, as updated monthly.

The recovery of costs incurred by a distribution utility for any generation component in excess of the transition supply contract rates shall be disallowed by the ERC, except for eligible contracts as defined under Section 33 hereof: *Provided*, That such limitation on the recovery of generation component costs by a distribution utility shall apply only to the equivalent quality and quantity of electricity still available to the distribution utility from NPC.

SEC. 68. *Review of IPP Contracts.* – An inter-agency committee chaired by the Secretary of Finance, with the Secretary of the Department of Justice and the Director-General of the National Economic Development Authority as members thereof is hereby created upon the effectivity of this Act.

The Committee shall immediately undertake a thorough review of all IPP contracts. In cases where such contracts are found to have provisions which are grossly disadvantageous, or onerous to the Government, the Committee shall cause the appropriate government agency to file an action under the arbitration clauses provided in said contracts or initiate any appropriate action under Philippine laws. The PSALM Corporation shall diligently seek to reduce stranded costs, if any.

SEC. 69. *Renegotiation of Power Purchase and Energy Conversion Agreements between Government Entities.* – Within three (3) months from the effectivity of this Act, all power purchase and energy conversion agreements between the PNOC-Energy Development Corporation (PNOC-EDC) and NPC, including but not limited to the Palimpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC and the terms thereof amended to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above

their true costs. All amended contracts shall be submitted to the Joint Congressional Power Commission for approval. The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all end-users.

SEC. 70. *Missionary Electrification.* – Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

SEC. 71. *Electric Power Crisis.* – Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.

SEC. 72. *Mandated Rate Reduction.* – Upon the effectivity of this Act, residential end-users shall be granted a rate reduction from NPC rates of thirty centavos per kilowatt-hour (P 0.30/kWh). Such reduction shall be reflected as a separate item in the consumer billing statement.

SEC. 73. *Lifeline Rate.* – A socialized pricing mechanism called a lifeline rate for the marginalized end-users shall be set by the ERC, which shall be exempted from the cross subsidy phase-out under this Act for a period often (10) years, unless extended by law. The level of consumption and the rate shall be determined by the ERC after due notice and hearing.

SEC. 74. *Cross Subsidies.* – Cross subsidies within a grid, between grids and/ or classes of customers shall be phased out in a period not exceeding three (3) years from the establishment by the ERC of a universal charge which shall be collected from all electricity end-users. Such level of cross subsidies shall be made transparent and identified separately in the billing statements provided to end-users by the suppliers.

The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential end-user; or would have an immediate, irreparable, and adverse financial effect on distribution utility.

## **CHAPTER IX** **FINAL PROVISIONS**

SEC. 75. *Statutory Construction.* – This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured. With respect to NPC's debts and IPP and related contracts, nothing in this Act shall be construed as: (1) an implied waiver of any right, action or claim, against any person or entity, of NPC or the Philippine Government arising from or relating to any such contracts; or (2) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the Philippine Government under existing contracts.

SEC. 76. *Education and Protection of End Users.* – End-users shall be educated about the implementation of retail access and its impact on end-users and on the proper use of electric power. Such education shall include, but not limited to, the existence of competitive electricity suppliers, choice of competitive electricity services, regulated

transmission and distribution services, systems reliability, aggregation, market, itemized billing, stranded cost, uniform disclosure requirements, low-income bill payment, energy conservation and safety measures.

The DOE, in coordination with the NPC, NEA, ERC and the Office of Press Secretary-Philippine Information Agency (OPS-PIA), shall undertake an information campaign to educate the public on the restructuring of the electric power industry and privatization of NPC.

SEC. 77. *Implementing Rules and Regulations.* – The DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organization and end-users, promulgate the Implementing Rules and Regulations (IRR) of the Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

SEC. 78. *Injunction and Restraining Order.* – The implementation of the provisions of the Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

SEC. 79. *Separability Clause.* – If for any reason, any provision of this act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 80. *Applicability and Repealing Clause.* – The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Service Act”; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the *National Electrification Decree*; Republic Act 7638, otherwise known as the “Department of Energy Act of 1992”; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the “Anti-Electricity

and Electric Transmission Lines/ Materials Pilferage Act of 1994”, shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provision with respect to electric power of Section 11 (c) of Republic Act 7916, as amended, and Section 5 (f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 81. *Effectivity Clause.* – This Act shall take effect on the fifteenth day following its publication in at least two (2) national paper of general circulation.

Approved, June 8, 2001

## **RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9136, ENTITLED “ELECTRIC POWER INDUSTRY REFORM ACT OF 2001”**

---

Pursuant to Sections 37 and 77 of Republic Act No. 9136, an *Act Ordaining Reforms in the Philippine Electric Power Industry*, otherwise known as the “Electric Power Industry Reform Act of 2001” (Act), the Department of Energy (DOE), in consultation with the appropriate government agencies such as the Energy Regulatory Commission (ERC), Department of Finance (DOF), National Electrification Administration (NEA), National Power Corporation (NPC), Department of Trade and Industry (DTI), Department of Justice (DOJ), Department of Budget and Management (DBM), Power Sector Assets and Liabilities Management Corporation (PSALM), the Electric Power Industry Participants, and with the approval of the Joint Congressional Power Commission (Power Commission), hereby issues, adopts and promulgates the following rules and regulations to implement the provisions of the Act.

### **PART I – GENERAL PROVISIONS**

The succeeding rules and regulations shall include the general provisions to be followed in implementing the major structural reforms for the electric power industry and the privatization of the state-owned NPC.

### **RULE 1. TITLE AND SCOPE**

SECTION 1. *Title.* –

These rules and regulations shall be referred to as the “Implementing Rules and Regulations of Republic Act No. 9136” (Rules) otherwise known as the “Electric Power Industry Reform Act of 2001” (Act).

SEC. 2. *Scope.* –

These Rules are promulgated under the authority of the DOE to formulate, in consultation with relevant government agencies, Electric Power Industry Participants, non-government organizations, End-users and consumers, such rules and regulations as may be necessary to implement the objectives of the Act and pursuant to the exercise of such other powers as may be necessary or incidental to attain the objectives of the Act. These Rules shall govern the relation and responsibilities of Electric Power Industry Participants and governmental authorities, including but not limited to: the DOE, NPC, NEA, ERC, and PSALM.

## **RULE 2. DECLARATION OF POLICY**

It is hereby declared the policy of the State:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency, promote consumer choice and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital, participation in the attendant risks, and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of Restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent Privatization of the assets and liabilities of the NPC;

- (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
- (k) To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

## **RULE 3. RESPONSIBILITIES OF THE DOE, ERC, NPC, NEA AND PSALM**

### *SECTION 1. Responsibilities of the DOE. –*

In addition to its existing powers and functions, the DOE shall supervise the Restructuring of the electricity industry and perform the following functions:

- (a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;
- (b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as PEP, which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy.

The PEP shall include a policy direction towards the Privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants.



Said PEP shall be submitted to Congress not later than the fifteenth (15th) day of September and every year thereafter;

- (c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the PEP. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry which are submitted to the DOE: *Provided, however,* That the ERC shall have exclusive authority covering the Grid Code and the Distribution Code; and the pertinent rules and regulations it may issue. The DOE, following its approval of the Transmission Development Plan (TDP) prepared by the National Transmission Corporation (TRANSCO) or its Buyer or Concessionaire, shall integrate the TDP with the annual development plans of Distribution Utilities and NPC, and other relevant data as are available to DOE, which shall be incorporated in the PEP;
- (d) Ensure the reliability, quality and security of supply of electric power;
- (e) Following the Restructuring of the electricity sector, the DOE shall, among others:
  - (i) Encourage private sector investments in the electricity sector and promote development of indigenous and Renewable Energy Sources including small-scale renewable energy generating sources;
  - (ii) Facilitate and encourage reforms in the structure and operations of Distribution Utilities for greater efficiency and lower costs;
  - (iii) In consultation with other government agencies, promote a system of incentives to encourage Electric Power Industry Participants, including new Generation Companies

and End-users, to provide adequate and reliable electric supply; and

- (iv) Undertake, in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaigns to educate the public on the Restructuring of the electricity sector and Privatization of NPC assets;
- (f) Jointly with the Electric Power Industry Participants, establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing the operations thereof;
- (g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;
- (h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of Republic Act No. 7638;
- (i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage Electric Power Industry Participants to provide adequate capacity to meet demand including, among others, reserve requirements;
- (j) Monitor private sector activities relative to energy projects in order to attain the goals of the Restructuring, Privatization, and modernization of the electric power sector as provided for under existing laws: *Provided,* That the DOE shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

- (k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;
- (l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;
- (m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;
- (n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;
- (o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;
- (p) Formulate such rules and regulations as may be necessary to implement the objectives of the Act;
- (q) As part of the reportorial requirements of the Act, the DOE shall prepare and submit to the Power Commission a semi-annual report on the status of the implementation of the Act on or before the last week of April and October of each year. Towards this end, the DOE may require reports or documents from the Electric Power Industry Participants as necessary to facilitate compliance with this mandate and subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information; and
- (r) Exercise such other powers as may be necessary or incidental to attain the objectives of the Act.

SEC. 2. *Responsibilities of the NPC.* –

- (a) Pursuant to Section 70 of the Act, notwithstanding the divestment and/or Privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and –controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.
- (b) Consistent with Section 34(d) of the Act, the NPC shall manage under existing arrangements, an environmental charge equivalent to P 0.0025 per kilowatt-hour (kWh) sales, intended solely for the rehabilitation and management of watersheds nationwide.
- (c) Pursuant to Section 47 (f) of the Act, NPC shall continue to operate Agus and Pulangui complexes, which shall be owned by PSALM.
- (d) Pursuant to Section 47 (j) of the Act, NPC/ PSALM may continue to generate and sell electricity only from the undisposed generating assets and IPP contracts

of PSALM. NPC/PSALM shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers.

SEC. 3. *Responsibilities of the NEA.* –

(a) NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with the Act. To this end, NEA shall develop and implement programs:

(i) To prepare Electric Cooperatives (ECs) in operating and competing under the deregulated electricity market within five (5) years from the effectivity of the Act, specifically in an environment of Open Access and retail wheeling and Retail Competition;

(ii) To strengthen the technical capability and financial viability of ECs, through the following activities:

(1) NEA may offer services to the ECs other than those related to its lending functions, for a fee duly approved by the NEA Board of Administrators; and

(2) NEA may consider hiring qualified external industry management experts and shall provide their services to the ECs: *Provided*, That such services will not increase Retail Rates.

(iii) To review and upgrade regulatory policies with a view to enhancing the viability of the ECs as electric utilities.

(b) NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the WESM by any EC or small Distribution

Utility to support their credit standing consistent with the provisions of the Act. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen Billion Pesos (P 15,000,000,000.00).

(c) NEA shall submit the report of ECs on their outstanding uncollected billings due from any local government unit (LGU) to the Department of Budget and Management (DBM) pursuant to Executive Order (E.O.) No. 190 issued on 21 December 1999. The DBM shall effect withholding from the Internal Revenue Allotment (IRA) of the concerned LGU: *Provided*, That there is a Memorandum of Agreement (MOA) executed between the LGU and NEA: *Provided, further*, That the uncollected billings are supported by a certification issued by the Municipality/ City or Provincial Treasurer.

SEC. 4. *Responsibilities of the ERC.* –

(a) Pursuant to Section 43 of the Act, the ERC shall have the responsibility of promoting competition, encouraging market development, ensuring customer choice, and penalizing abuse of market power in the electric power industry.

(b) Pursuant to Sections 43 and 45 of the Act, the ERC shall promulgate such rules and regulations as authorized thereby, including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers.

(c) The ERC shall review and approve any plan for the expansion or improvement of transmission facilities submitted by TRANSCO or its Buyer or Concessionaire with due regard to the TDP.

(d) To promote efficiency and non-discrimination, the ERC, after the

conduct of public hearings, shall determine, fix and approve Transmission and Distribution Wheeling Charges, and Retail Rates through an ERC established and enforced methodologies setting the same. It shall fix and regulate the rates and charges to be imposed by Distribution Utilities on their Captive Market as well as the Universal Charge to be imposed on all electricity End-users including self-generating entities.

- (e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgement of receipt of a copy thereof by the LGU Legislative Body of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

This Section 4 (e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance with

Section 36 of the Act.

- (f) Amend or revoke, after due notice and hearing, the authority to operate of any Person or entity which fails to comply with the provisions of the Act, these Rules or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order.
- (g) In order to facilitate the provision of an efficient, reliable and quality service to End-users, the ERC shall promulgate a Grid Code and a Distribution Code that shall include performance standards and the minimum financial capability standards and other terms and conditions for access to and use of the transmission and distribution facilities within six (6) months from the effectivity of the Act.
- (h) Act on applications for cost recovery and return on DSM.
- (i) The ERC shall set the criteria for eligibility and authorize eligible Generation Companies, Distribution Utilities, Suppliers, IPP Administrators, End-users and other entities authorized by ERC in accordance with the Act for membership in the WESM. For the purpose of ensuring a greater supply and rational pricing of electricity, the ERC shall enforce the rules and regulations governing the operations of WESM and the activities of the WESM Operator and other WESM Participants. In cases of national and international security emergencies or natural calamities, it can suspend spot market operations within the WESM.
- (j) The ERC shall ensure that Electric Power Industry Participants and NPC functionally and structurally unbundle their respective business activities and rates and determine the levels of cross

subsidies in the existing Retail Rates until the same is removed in accordance with the sectors as identified in and as required by Sections 5, 36 and 74 of the Act. ERC shall set a Lifeline Rate for the Marginalized End-users. In particular, the distribution rates should unbundle at least the following business activities or assets: supply, distribution, and such other services as the ERC may determine.

- (k) The ERC shall promulgate rules and regulations prescribing the qualifications of Suppliers, which shall include among others their technical and financial capability and credit worthiness.
- (l) The ERC shall determine the electricity End-users comprising the Contestable and Captive Markets. The ERC shall also seek to foster competition in credit, collection and metering services in Contestable Markets. It shall likewise license Suppliers to Contestable Markets.
- (m) The ERC shall perform such other regulatory functions as are appropriate and necessary in order to ensure the successful Restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which Generation Companies, Distribution Utilities, which are not publicly listed, shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: *Provided, however,* That Generation Companies, Distribution Utilities or their respective holding companies that are already listed in the Philippine Stock Exchange (PSE) are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of the Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their Certificate of Compliance (COC);

- (n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector relating to the foregoing powers, functions and responsibilities.
- (o) It shall also be empowered to issue such other rules that are essential in the discharge of its functions as an independent quasi-judicial body.
- (p) All actions taken by the ERC pursuant to the Act are subject to judicial review and the requirements of due process and the cardinal rights and principles applicable to quasi-judicial bodies.
- (q) The ERC may require reports or documents from the Electric Power Industry Participants as necessary to facilitate compliance with the Act, subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information.
- (r) All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.
- (s) The ERC shall conduct rate application hearings in the locality where the applicant is conducting its operations: *Provided,* That this requirement shall not apply to applications filed pursuant to Section 36 of the Act.

#### SEC. 5. *Responsibilities of the PSALM.*

- (a) Consistent with Section 49 of the Act, PSALM shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of NPC arising from loans,

issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by PSALM.

- (b) The PSALM shall formulate and implement a program for the sale and Privatization of the NPC assets and IPP contracts and the liquidation of NPC Debts and Stranded Contract Costs in accordance with the Act.

It shall calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC, which amount shall form part of the Universal Charge to be determined, fixed, and approved by the ERC.

- (c) Pursuant to Section 60 of the Act, the PSALM shall assume all outstanding financial obligations of ECs to NEA and other government agencies arising from their respective Rural Electrification Program.

This shall be done in accordance with the program duly approved by the President of the Philippines.

#### **RULE 4. DEFINITION OF TERMS**

As used in these Rules, the following terms shall have the following respective meanings:

- (a) **“Act”** unless otherwise stated, refers to, Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;
- (b) **“Accredited Facility”** refers to a facility granted the certificate of accreditation by NPC or DOE pursuant to Executive Order No. 215 and its implementing rules and regulations;
- (c) **“Affiliate”** means any Person which, alone or together with any other Person, directly or indirectly, through one or more intermediaries, Controls, is Controlled

by, or is under common Control with another Person. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent;

- (d) **“Aggregator”** refers to a Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in a Contestable Market for the purpose of purchasing and reselling electricity on a group basis;
- (e) **“Ancillary Services”** refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with the Act;
- (f) **“Bureau of Internal Revenue” or “BIR”** refers to an attached agency of the Department of Finance (DOF);
- (g) **“Board of Investments” or “BOI”** refers to an attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 5186, as amended;
- (h) **“Bonafide Member”** refers to a Person that has met all the requirements set forth under the applicable EC by-laws and has been enlisted as such, with voting rights under the “one-man-one-vote” cooperative principle;
- (i) **“Build-Operate-Transfer” or “BOT”** shall have the meaning specified by Republic Act No. 6957, as amended, otherwise known as “BOT Law” and its implementing rules and regulations;
- (j) **“Buyer or Concessionaire”** refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets;

- (k) **“Captive Market”** refers to electricity End-users who do not have the choice of a Supplier of electricity, as may be determined by the ERC in accordance with the Act;
- (l) **“Central Dispatch”** refers to the process of issuing direct instructions to Electric Power Industry Participants by the grid operator to achieve the economic operation and maintenance of quality, stability, reliability and security of the transmission system;
- (m) **“Competition Rules”** refer to the rules promulgated by ERC to promote and ensure competition in the electric power industry pursuant to the Act and these Rules;
- (n) **“Concession Contract”** refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned transmission assets;
- (o) **“Condonation”** refers to the setting aside or suspension from the ECs’ books of accounts of all their financial obligations to NEA and other government agencies as a result of PSALM’s assumption of the same, subject to their compliance with the Program approved by the President of the Philippines;
- (p) **“Contestable Market”** refers to the electricity End-users who have a choice of a Supplier of electricity, as may be determined by the ERC in accordance with the Act;
- (q) **“Contiguous Area”** refers to areas which are within the same boundaries such as subdivisions, villages, Economic Zones, business districts and other similarly situated End-users in which Supply of Electricity can be measured through metering devices;
- (r) **“Control”** shall mean the power to direct or cause the direction of the management policies of a Person by contract, agency or otherwise;
- (s) **“Cooperative Development Authority”** or **“CDA”** refers to an entity created under Republic Act No. 6939;
- (t) **“Corporation Code”** refers to Batas Pambansa Bilang 68, otherwise known as “The Corporation Code of the Philippines”;
- (u) **“Demand Side Management”** or **“DSM”** refers to measures undertaken by Distribution Utilities to encourage End-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;
- (v) **“Department of Budget and Management”** or **“DBM”** refers to the government agency created pursuant to Executive Order No. 25, as amended;
- (w) **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the Act;
- (x) **“Department of Finance”** or **“DOF”** refers to the government agency created pursuant to Executive Order No. 127, as amended;
- (y) **“Distribution Code”** refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their Distribution Systems, which includes, among others, the standards for service and performance, and defines and establishes the relationship of Distribution Systems with facilities or installations of parties connected thereto;
- (z) **“Distribution of Electricity”** refers to the conveyance of electric power from

transmission facilities or Embedded Generators to End-users by a Distribution Utility through its Distribution System pursuant to the provisions of the Act and these Rules;

- (aa) **“Distribution System”** refers to the system of wires and associated facilities belonging to a franchised Distribution Utility extending between the delivery points on the transmission or Subtransmission System or generator connection and the point of connection to the premises of the End-user;
- (bb) **“Distribution Wheeling Charge”** refers to the cost or charge regulated by the ERC for the use of a Distribution System and/or the availment of related services;
- (cc) **“Distribution Utility”** refers to any EC, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a Distribution System in accordance with its franchise and the Act;
- (dd) **“Economic Zones”** or **“EZs”** refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);
- (ee) **“Electric Cooperative”** or **“EC”** refers to a Distribution Utility organized pursuant to Presidential Decree No. 269, as amended or as otherwise provided in the Act;
- (ff) **“Electric Power Industry Participant”** refers to any Person or entity engaged in the generation, transmission, distribution or Supply of Electricity;
- (gg) **“Embedded Generators”** refer to generating units that are indirectly connected to the Grid through the Distribution Utilities’ lines or industrial generation facilities that are synchronized with the Grid;
- (hh) **“End-user”** refers to any Person or entity requiring the supply and delivery of electricity for its own use;
- (ii) **“Energized Area”** refers to a geographical area enjoying dependable and adequate electric service;
- (jj) **“Energy Regulatory Board”** or **“ERB”** refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;
- (kk) **“Energy Regulatory Commission”** or **“ERC”** refers to the regulatory agency created by Section 38 of the Act;
- (ll) **“Financing for Rural Electrification”** refers to those loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution, generation, and subtransmission facilities for the purpose of supplying electric service, and those loans for the restoration, upgrading and expansion of such facilities, in areas which are considered rural at the time of the grant of such loans;



- (mm) **“Franchise Area”** refers to a geographical area exclusively assigned or granted to a Distribution Utility for Distribution of Electricity;
- (nn) **“Generation Company”** refers to any Person or entity authorized by the ERC to operate facilities used in the Generation of Electricity;
- (oo) **“Generation Facility”** refers to a facility for the production of electricity;
- (pp) **“Generation of Electricity”** refers to the production of electricity by a Generation Company or a co-generation facility pursuant to the provisions of the Act;
- (qq) **“Grid”** refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the Act;
- (rr) **“Grid Code”** refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;
- (ss) **“Independent Market Operator”** or **“IMO”** refers to a person who is financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity markets endorsed jointly by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from the Autonomous Group Market Operator (AGMO), pursuant to Section 30 of the Act;
- (tt) **“Independent Power Producer”** or **“IPP”** refers to an existing power generating entity which is not owned by NPC as of the effectivity of the Act;
- (uu) **“Inter-Class Cross Subsidy”** refers to an amount charged by Distribution Utilities to industrial and commercial End-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors such as the residential End-users, hospitals, and streetlights;
- (vv) **“Inter-Regional Grid Cross Subsidy”** refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;
- (ww) **“Intra-Regional Grid Cross Subsidy”** refers to an amount embedded in the electricity rates of NPC charged to Distribution Utilities and non-utilities with higher load factor and/or delivery voltage in order to reduce the electricity rates charged to Distribution Utilities with lower load factor and/or delivery voltage located in the same regional grid;
- (xx) **“IPP Administrator”** refers to qualified independent entities appointed by PSALM who shall administer, conserve and manage the contracted energy output of NPC IPP contracts, including selling the contracted energy output of these contracts and offering Ancillary Services, where applicable;
- (yy) **“Lifeline Rate”** refers to the subsidized rate given to Marginalized/low-income Captive Market End-users who cannot afford to pay at full cost;
- (zz) **“Marginalized End-users”** refer to low-income, captive, household electricity consumers who cannot afford to pay

at full cost and have levels of electricity consumption below a threshold level to be determined by the ERC;

(aaa) **“Market Fees”** refer to the charges imposed on all market members by the Market Operator to cover the cost of administering and operating the WESM, as approved by the ERC;

(bbb) **“Market Operator”** refers to either the “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall assume the functions, assets and liabilities of the AGMO or the IMO, the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO pursuant to Section 30 of the Act;

(ccc) **“Merit Order Dispatch Instructions”** refer to the dispatch schedule that will be submitted by the Market Operator to the Grid/system operator for the purpose of providing Central Dispatch;

(ddd) **“Missionary Electrification”** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;

(eee) **“National Electrification Administration”** or **“NEA”** refers to the government agency created under Presidential Decree No. 269, as amended, with additional mandate set forth in the Act;

(fff) **“National Power Corporation”** or **“NPC”** refers to the government corporation created under Republic Act No. 6395, as amended;

(ggg) **“National Transmission Corporation”** or **“TRANSCO”** refers to the corporation organized pursuant to the Act to acquire all the transmission assets of the NPC;

(hhh) **“Open Access”** refers to the system of allowing any qualified Person the use of transmission, and/or Distribution System and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC. For this purpose, qualified Persons shall include all WESM Participants;

(iii) **“Person”** refers to a natural or juridical person, as the case may be;

(jjj) **“Philippine Energy Plan”** or **“PEP”** refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638;

(kkk) **“Philippine Stock Exchange”** or **“PSE”** refers to the corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);

(lll) **“Power Commission”** refers to the Joint Congressional Power Commission created pursuant to Section 62 of the Act;

(mmm) **“Power Development Program”** or **“PDP”** refers to the indicative plan for managing electricity demand through energy efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and Distribution Utility companies;

- (nnn) **“Power Sector Assets and Liabilities Management Corporation”** or **“PSALM Corp.”** or **“PSALM”** refers to the corporation created pursuant to Section 49 of the Act;
- (ooo) **“Privatization”** refers to the sale, disposition, change and transfer of entire ownership and control of all assets and IPP contracts from the Government or a government corporation to a private Person or entity;
- (ppp) **“Qualified Distribution Utilities”** refer to Distribution Utilities that are technically and financially capable of owning, operating, maintaining, upgrading and expanding subtransmission facilities in accordance with the requirement of the Act;
- (qqq) **“Referendum”** refers to an electoral process which Bonafide Members of ECs register their respective vote on the issue of conversion, through secret balloting, in designated voting centers, the conduct of which shall be under the supervision of NEA;
- (rrr) **“Related Group”** refers to a Person and any business entity Controlled by that Person, along with the Affiliates of such business entity, and the directors and officers of the business entity or its Affiliates, and relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree, of the Person or any of the foregoing directors or officers;
- (sss) **“Renewable Energy Resources”** refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;
- (ttt) **“Restructuring”** refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and End-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;
- (uuu) **“Retail Rate”** refers to the total price paid by End-users consisting of the charges for generation, transmission and related Ancillary Services, distribution, supply and other related charges for electric service;
- (vvv) **“Retail Competition”** refers to the provision of electricity to a Contestable Market by Suppliers through Open Access;
- (www) **“Return-On-Rate-Base”** or **“RORB”** refers to the rate setting methodology as determined by the ERC whereby TRANSCO or its Buyer or Concessionaire and Distribution Utilities are allowed to recover just and reasonable costs and earn a reasonable return so as to enable such entities to operate viably;
- (xxx) **“Rural Electrification”** refers to the delivery of basic electric services, consisting of power generation, subtransmission and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;
- (yyy) **“Rural Electrification Loan”** refers to financial obligations strictly incurred for Rural Electrification;
- (zzz) **“Rural Electrification Program”** refers to the National Government plan to achieve total electrification of the countryside for the purpose of fostering economic development and uplifting the living standards of the Filipino people;

- (aaaa) **“Self-Generation Facility”** refers to a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by households, clinics, hospitals and other medical facilities;
- (bbbb) **“Small Power Utilities Group”** or **“SPUG”** refers to the functional unit of NPC created to pursue Missionary Electrification function;
- (cccc) **“Small Distribution Company”** refers to a Distribution Utility whose peak demand is equal to or less than ten (10) megawatts;
- (dddd) **“Stock Cooperative”** refers to a duly-registered association of Persons with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with the universally-accepted cooperative principles as defined under Article 4, Chapter 1 of Republic Act No. 6938, otherwise known as the “Cooperative Code of the Philippines;”
- (eeee) **“Stock Corporation”** refers to an artificial being created by operation of law with capital stock divided into shares and authorized to distribute to its shareholders dividends out of its surplus profits, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence;
- (ffff) **“Stranded Contract Costs of Eligible Contracts of Distribution Utilities”** refer to the excess of the contracted cost of electricity under eligible contracts of Distribution Utilities over the actual selling price of the contracted energy output of such contracts that would be incurred upon Retail Competition and Open Access. For this purpose, “eligible contracts” are contracts which have been approved by the ERB as of 31 December 2000;
- (gggg) **“Stranded Contract Costs of NPC”** refer to the excess of the contracted cost of electricity under eligible contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of 31 December 2000;
- (hhhh) **“Stranded Debts of NPC”** or **“Stranded Debts”** refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and Privatization of NPC assets: *Provided, however,* That such obligations include any of such obligations refinanced by PSALM: *Provided, further,* That such refinancing of such unpaid obligations shall not result in increasing the Universal Charge burden;
- (iiii) **“Subtransmission Assets”** refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of assets including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land where such facilities/equipment are

located. These include NPC assets linking the transmission system and the Distribution System which are neither classified as generation nor transmission;

(jjjj) **“Subtransmission System”** refers to systems comprised of Subtransmission Assets;

(kkkk) **“Supplier”** refers to any Person licensed by the ERC to sell, broker, market or aggregate electricity to End-users;

(llll) **“Supplier’s Charge”** refers to the charge imposed by Suppliers for the sale of electricity to End-users, excluding the charges for generation, transmission and distribution wheeling;

(mmmm) **“Supply of Electricity”** refers to the sale of electricity by a party other than a Generation Company or a Distribution Utility in the Franchise Area of a Distribution Utility using the wires of such Distribution Utility;

(nnnn) **“Technical Constraints”** refer to line, equipment, and other limitations as defined in the WESM Rules, Grid Code and Distribution Code;

(oooo) **“Transmission Charge”** refers to the regulated cost or charges for the use of a transmission system which may include the availment of Ancillary Services;

(pppp) **“Transmission Development Plan”** or **“TDP”** refers to the program for managing the transmission system through efficient planning for its expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and implemented by the TRANSCO or its Buyer or Concessionaire pursuant to the Act;

(qqqq) **“Transmission of Electricity”** refers to the conveyance of electricity through the high voltage backbone system;

(rrrr) **“Universal Charge”** refers to the charge, if any, imposed for the recovery of the Stranded Debts, Stranded Contract Costs of NPC, and Stranded Contract Costs of Eligible Contracts of Distribution Utilities and other purposes pursuant to Section 34 of the Act;

(ssss) **“Unviable Area”** refers to a geographical area within the Franchise Area of a Distribution Utility where immediate extension of distribution line is not feasible;

(tttt) **“Wholesale Electricity Spot Market”** or **“WESM”** refers to the Wholesale Electricity Spot Market to be created in accordance with the Act;

(uuuu) **“WESM Participants”** refer to all Generation Companies, Distribution Utilities, Suppliers, Aggregators, End-users, the TRANSCO or its Buyer or Concessionaire, IPP Administrators, and other entities authorized by the ERC to participate in the WESM in accordance with the Act; and

(vvvv) **“WESM Rules”** refer to the detailed rules that govern the administration and operation of the WESM.

## PART II – STRUCTURE AND OPERATION OF THE ELECTRIC POWER INDUSTRY

### 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.

*SEC. 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, PNOC-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, PNOC-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.

### SEC. 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.

### SEC. 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 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 unbundle 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 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 or 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.

*SEC. 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.

*SEC. 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.

## **RULE 6. TRANSMISSION SECTOR**

### *SECTION 1. Guiding Principle. –*

The transmission of electric power is affected with public interest and shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC.

### *SEC. 2. Scope of Application. –*

This Rule shall apply to TRANSCO or its Buyer or Concessionaire and any other successor-in-interest thereto.

### *SEC. 3. Ownership Limitation. –*

The TRANSCO or its Buyer or Concessionaire or any of its stockholders, directors, officers 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, Distribution Utility, IPP Administrator and Supplier.

### *SEC. 4. Separation Between Transmission and Subtransmission. –*

The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets. Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. The ERC shall take into account the objective of allowing nondiscriminatory Open Access

to the transmission and Subtransmission Systems.

The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to:

- (a) Subtransmission Assets are normally in close proximity to retail customers;
- (b) Subtransmission Assets are primarily radial in character;
- (c) Power flows into Subtransmission Assets; it rarely, if ever, flows out;
- (d) When power enters Subtransmission Assets, it is not reconsigned or transported on to some other market;
- (e) Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;
- (f) Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets; and
- (g) Subtransmission Assets will be of reduced voltage.

### *SEC. 5. Initial Classification of Transmission Assets. –*

Pending the issuance of the new standards for classification of transmission assets by ERC, transmission assets shall be defined as follows:

- (a) For the Luzon Grid, transmission facilities rated 230 kV and above shall generally be considered transmission assets;
- (b) For the Visayas Grid, transmission facilities rated 69 kV and above shall generally be considered transmission assets;

(c) For the Mindanao Grid, transmission facilities rated 138 kV and above shall generally be considered transmission assets; and

(d) Notwithstanding the foregoing provisions, any line at the specified level for each Grid that serves an End-user or customer shall be considered a subtransmission line, and any line below the specified level for each Grid that serves a transmission function shall be considered a transmission line.

*SEC. 6. Initial Classification of Subtransmission Assets. –*

Step-down transformers used solely by load customers are considered Subtransmission Assets.

In the case of step-down transformer banks serving a single Distribution Utility, the Distribution Utility or Distribution Utilities shall have the option to purchase said facility, provided, it will guarantee the reliable Supply of Electricity to grid control equipment.

*SEC. 7. Functions and Responsibilities of TRANSCO or its Buyer or Concessionaire. –*

The TRANSCO or its Buyer or Concessionaire shall have, among others, the following functions and responsibilities:

- (a) Act as the system operator of the nationwide electrical transmission and Subtransmission System, transferred to it by NPC;
- (b) Provide open and non-discriminatory access to its system to all electricity users;
- (c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the Grid in accordance with the performance standards for the operation and maintenance of the Grid, as set forth in the Grid Code and the Distribution Code.

The performance indicators for reliability, security, adequacy, integrity and stability shall include but are not limited to the following:

- (i) Number of Interruption Events;
- (ii) Sustained Average Interruption Frequency Index;
- (iii) Momentary Average Interruption Frequency Index;
- (iv) Sustained Average Interruption Duration Index;
- (v) System Interruption Severity Index;
- (vi) Frequency of tripping per 100 c-km;
- (vii) Average Forced Outage Duration;
- (viii) Accumulated Time Error;
- (ix) Frequency Limit Violation; and
- (x) Voltage limit Violations.

- (d) Improve and expand its transmission facilities, consistent with the TDP and the Grid Code, to adequately serve Generation Companies, Distribution Utilities and Suppliers requiring transmission service and/or Ancillary Services through the transmission system.

TRANSCO or its Buyer or Concessionaire shall submit any plan for expansion or improvement of its facilities for approval by the ERC; and

- (e) Provide Central Dispatch, through its grid operator, to all Generation Facilities and loads connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator, taking into account outstanding bilateral contracts and subject to Technical Constraints.

SEC. 8. *Obligations of TRANSCO.* –

The TRANSCO shall have, among others, the following obligations:

- (a) Prepare the TDP in consultation with Electric Power Industry Participants.
- (b) Submit an updated TDP for approval to the DOE on a timely basis each year for integration with the PDP and PEP.
- (c) Remit its net profit, if any, to the PSALM not later than ninety (90) days after the immediately preceding quarter subject to annual reconciliation when the audited and certified annual financial statements are finally made available. Net profit is defined as:

Net Profit = Total Utility Revenue – (Total Operating Expenses – Other Income + Interest & Other Charges)

Net proceeds from the Privatization of TRANSCO shall be immediately remitted to PSALM.

- (d) TRANSCO shall secure approval of its Transmission Charges from the ERC pursuant to Section 43 (f) of the Act.
- (e) TRANSCO shall sell its Subtransmission Assets to qualified Distribution Utilities pursuant to the Act and, Part IV, Section 13 of Rule 22 on National Transmission Corporation. In the event that a Distribution Utility is not qualified or a qualified Distribution Utility refuses to acquire such assets, then TRANSCO shall be deemed in compliance with this obligation.

The Buyer or Concessionaire shall be responsible for the obligations under Subsections (a), (b), and (d) hereof.

SEC. 9. *Compliance with Grid Code.* –

TRANSCO or its Buyer or Concessionaire shall comply with the provisions of the Grid Code in the process of improving and expanding its transmission facilities in order to ensure and maintain the reliability, adequacy, security, stability and integrity of the Grid and adequately serve Electric Power Industry Participants requiring transmission service or Ancillary Services through the Grid.

SEC. 10. *Transmission Development Plan.* –

- (a) The TDP refers to a plan for managing the transmission system through efficient planning for expansion, upgrading, rehabilitation, repair and maintenance, to be prepared and implemented by TRANSCO or its Buyer or Concessionaire.
- (b) TRANSCO or its Buyer or Concessionaire shall be responsible for the preparation of the TDP, in consultation with the Electric Power Industry Participants. TRANSCO or its Buyer or Concessionaire shall submit the TDP for approval by DOE for integration into the PDP and PEP.
- (c) Any plan for expansion or improvement of transmission facilities shall be approved by the ERC: *Provided*, That such approval shall not be unreasonably withheld.

SEC. 11. *TRANSCO Related Businesses.* –

The TRANSCO or its Buyer or Concessionaire shall be primarily responsible for maintaining and operating the Grid pursuant to this Rule.

- (a) TRANSCO or its Buyer or Concessionaire may engage in any related business which maximizes utilization of its assets;
- (b) A portion of the annual net income of not more than fifty percent (50%) derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce the transmission wheeling charges as determined by ERC; and

(c) Separate audited accounts shall be maintained for each business undertaking to ensure that the transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.

SEC. 12. *Transmission Charges.* –

- (a) Transmission Charges shall be paid to TRANSCO or its Buyer or Concessionaire for the use of the transmission system. Transmission users shall also pay charges for the use of Ancillary Services. The WESM Rules shall provide for the methodology for the price and cost recovery of Ancillary Services that are to be provided by the Generation Company.
- (b) Transmission Charges and fees for Ancillary Services shall be fixed by the ERC.

**RULE 7. DISTRIBUTION SECTOR**

SECTION 1. *Guiding Principles.* –

- (a) Pursuant to Section 22 of the Act, the Distribution of Electricity to End-users shall be a regulated common carrier business, requiring a national franchise. For purposes of these Rules, distribution franchise shall mean the privilege of a Distribution Utility to convey electric power through its Distribution System in a given geographical area granted by the Congress of the Republic of the Philippines. The Distribution of Electricity is a business affected with public interest.
- (b) The following rules shall apply to the Distribution of Electricity.

SEC. 2. *Scope of Application.* –

This Rule shall apply to an entity that owns, operates, or Controls one or more Distribution Systems such as but not limited to:

- (a) ECs;
- (b) Privately-Owned Distribution Utilities;
- (c) Local Government Unit Owned-and-Operated Distribution Systems;
- (d) Entities duly authorized to operate within the EZs; and
- (e) Other duly authorized entities engaged in the Distribution of Electricity.

SEC. 3. *Ownership Limitation.* –

- (a) A Distribution Utility and any of its subsidiaries, Affiliates, stockholders, directors, officers or their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, directly or indirectly, in the TRANSCO or its Buyer or Concessionaire, or the IMO.
- (b) The holdings of any Person, natural or juridical, including its directors, officers, stockholders, and their related interests in a Distribution Utility and their respective holding companies shall not exceed twenty-five percent (25%) of the total voting shares of stock. This shall not apply to a Distribution Utility or the company holding the shares or its controlling stockholders whose shares are listed in the PSE. Implementation of this provision shall be in accordance with the rules and regulations issued by ERC. This section shall not apply to ECs in accordance with Section 28 of the Act.
- (c) A Distribution Utility shall be required to sell to the public a portion of not less than fifteen percent (15%) of its common shares of stock not later than five (5) years from the effectivity of the Act, except those Distribution Utilities or its respective holding companies listed in the PSE, subject to the rules and regulations of the ERC to be issued for this purpose.

SEC. 4. *Obligations of a Distribution Utility.* –

- (a) A Distribution Utility shall provide distribution services and connections to its systems for any End-user within its Franchise Area consistent with the Distribution Code. Any existing End-user within the Franchise Area of a Distribution Utility that is connected to TRANSCO facilities shall be served by the franchised Distribution Utility upon acquisition of the subtransmission facilities: *Provided, however,* That the Distribution Utility which acquired the subtransmission facilities shall be paid by the End-user the corresponding subtransmission rates or wheeling charge imposed by NPC in accordance with its contract to the End-user as approved by ERC.
- (b) A Distribution Utility shall structurally and functionally unbundle its distribution business activities and rates from its wires, generation and supply businesses. A Distribution Utility shall comply with Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.
- (c) A Distribution Utility shall provide open and non-discriminatory access to its Distribution System to all End-users, including Suppliers and Aggregators.
- (d) A Distribution Utility shall comply with the technical specifications and financial standards prescribed in the Distribution Code and the performance standards prescribed in these Rules. To this end, ERC shall issue submission requirements for Distribution Utilities to comply with the technical specifications, financial and the performance standards after the effectivity of these Rules and the Distribution Code.
  - (i) A Distribution Utility shall submit to ERC a statement of compliance.
  - (ii) A Distribution Utility that does not comply with the technical specifications, performance standards and financial capability standards as prescribed in the Distribution Code shall submit to ERC a plan to comply within three (3) years therewith. The ERC shall, within sixty (60) days from receipt of such plan, evaluate the same and notify the Distribution Utility concerned of its action.
  - (iii) A Distribution Utility is required to implement the ERC-approved plan to comply with the said technical specifications prescribed in the Distribution Code and the performance standards of these Rules within three (3) years from the approval of said plan.
  - (iv) Failure by the Distribution Utility to submit a feasible and credible plan or failure to implement the same shall serve as ground for the imposition of appropriate sanctions, fines or penalties as may be prescribed by ERC.
- (c) A Distribution Utility shall comply with the requirements in the Grid Code, WESM Rules and all applicable laws.
- (d) A Distribution Utility shall provide universal service within its Franchise Area, over a reasonable time, including Unviable Areas, as part of its social obligations. This obligation shall be performed in a manner that shall allow such Distribution Utilities to collect different rates in Unviable Areas to sustain its economic viability, subject to approval by the ERC.
- (e) A Distribution Utility shall file with the ERC its petition to allow another Distribution Utility to provide electricity to areas that it does not find viable, pursuant to Section 6 of this Rule.

- (f) A Distribution Utility shall supply electricity in the least cost manner to the Captive Market within its Franchise Area, subject to the collection of Retail Rates duly approved by ERC.
- (g) A Distribution Utility shall file for review and approval by the ERC its unbundled rates reflecting the true costs of service pursuant to Rule 15 on Unbundling of Rates, and the proposal for the removal of cross subsidies among the customers it serves pursuant to Rule 16 on Removal of Cross Subsidies.
- (h) A Distribution Utility shall file with the ERC its petition on the Lifeline Rate to be applied to its Marginalized End-users, pursuant to Rule 20 on Lifeline Rate.
- (i) A Distribution Utility shall recover Stranded Contract Costs under eligible contracts approved by ERB as of 31 December 2000, subject to review by ERC pursuant to Rule 17 on Stranded Debts and Contract Costs Recovery.
- (j) A Distribution Utility shall collect on a monthly basis from all Endusers a Universal Charge set by ERC, to be remitted to PSALM on or before the fifteenth (15th) of the succeeding month, net of any amount due to the Distribution Utility.
- (k) A Distribution Utility shall identify and segregate in its customer billing statements the components of the Retail Rate.
- (l) A Distribution Utility shall comply with Rule 11 on Cross Ownership, Market Abuse and Anti-Competitive Behavior.
- (m) A Distribution Utility shall file for review and approval by the ERC any changes in the terms and conditions of services to its Franchise Areas.
- (n) A Distribution Utility shall prepare and submit to the DOE an annual 5-year distribution development plan not later than the fifteenth (15th) of March of every year, for integration with the PDP and PEP. In the case of the ECs, such plans shall be submitted through NEA for review and consolidation. To this end, NEA shall submit to the DOE the National Electric Cooperatives Distribution Development Plan not later than the 15th of March of every year.
- (o) A Distribution Utility shall pay a franchise tax only on its distribution wheeling and Captive Market supply revenues. To this end, the DOF shall issue the necessary guidelines.
- (p) A Distribution Utility shall comply with the reportorial requirements as may be prescribed by the ERC and the DOE.
- (q) A Distribution Utility that fails to comply with any of these obligations shall be subject to fines and penalties as imposed by the ERC.

SEC. 5. *Privileges of a Distribution Utility.* –

- (a) A Distribution Utility shall be entitled to impose and collect Distribution Wheeling Charges and connection fees, Retail Rates and other charges as approved by the ERC from the End-user and other qualified customers.
- (b) A Distribution Utility may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.
- (c) A Distribution Utility may, directly or indirectly, engage in any related business undertaking that maximizes the utilization of its assets: *Provided*, That quality of service shall not deteriorate pursuant to the standards provided in the Grid Code and Distribution Code and Rule 10 on

Structural and Functional Unbundling of Electric Power Industry Participants. To this end, the Distribution Utility shall submit to the ERC the appropriate documents to effect the following:

- (i) A portion of the net annual income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce its Distribution Wheeling Charges: *Provided, That*, such portion shall not exceed fifty percent (50%) of the net income derived from such undertaking.
- (ii) Separate accounts shall be maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.

SEC. 6. *Provision of Service in Unviable Areas.*

–

- (a) Unenergized areas that a Distribution Utility does not find viable may be transferred to another Distribution Utility, if any is available, which will provide the service, subject to approval by ERC. In cases where a Distribution Utility failed or refused to service any area within its Franchise Area and allows another utility to service the same, the arrangements between the Distribution Utilities shall not affect their respective Franchise Areas. The ERC shall issue the appropriate guidelines to implement this provision.
- (b) In remote and Unviable Areas where the Distribution Utility is unable to serve for any reason as authorized by ERC in accordance with the Act, the areas shall be opened to other qualified third parties that may provide the service pursuant

to Rule 14 on Provision of Electricity by Qualified Third Parties.

SEC. 7. *Structural and Operational Reforms Between and Among Distribution Utilities.* –

- (a) Pursuant to Section 23 of the Act, the ERC shall issue the appropriate guidelines for the structural and operational reforms of a Distribution Utility. Such reforms shall include, but not limited, to merger, consolidation, integration, bulk procurement and joint ventures.
- (b) With respect to ECs, the DOE through NEA shall facilitate and encourage reforms in the structure and operations of a Distribution Utility for greater efficiency and lower costs.
- (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the *Corporation Code*. Nothing contained in the Act shall deprive ECs of any privilege or right granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:
  - (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the *Cooperative Code of the Philippines* or the *Corporation Code*, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.



- (ii) ECs converted into Stock Corporations shall be registered with the SEC in accordance with the *Corporation Code*, while those converted into Stock Cooperatives, shall be registered with the CDA: *Provided, however*, That the ECs which opt to remain as non-Stock Cooperatives shall continue to be registered with the NEA and shall be governed by the provisions of Presidential Decree No. 269, as amended.
- (iii) An EC heretofore converted, regardless of the corporate form, or its successor entity, shall retain its franchise rights: *Provided, further*, That its operations shall be regulated by the ERC and other Government instrumentalities insofar as practicable and consistent with the Act.

SEC. 8. *Franchise for a Distribution Utility.* –

- (a) Pursuant to Section 27 of the Act, a franchise to a Person intending to engage in Distribution of Electricity shall be granted exclusively by the Congress of the Philippines.
- (b) All existing franchises shall be allowed to their full term.
- (c) In the case of ECs, renewals and cancellations of franchise shall remain with the National Electrification Commission (NEC) under the NEA for five (5) more years after the effectivity of the Act.

**RULE 8. SUPPLY SECTOR**

SECTION 1. *Guiding Principles.* –

- (a) Pursuant to Section 29 of the Act, the Supply of Electricity to Endusers is a business affected with public interest.

- (b) The Supply of Electricity to End-users in Contestable Market requires a license from the ERC except for the Supply of Electricity by Distribution Utilities within their Franchise Areas and Persons authorized to supply electricity within their respective EZs.

SEC. 2. *Scope of Application.* –

- (a) This Rule shall apply to all Suppliers.
- (b) Subject to the qualifications set by the ERC, any of the following may obtain a license to become a Supplier:
  - (i) A Generation Company or Affiliate thereof;
  - (ii) An Affiliate of a Distribution Utility with respect to the latter's Contestable Market within or outside its Franchise Area;
  - (iii) Aggregators;
  - (iv) An IPP Administrator; and
  - (v) Any other Person authorized by the ERC to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and these Rules.

SEC. 3. *Ownership Limitation and Restrictions.* –

- (a) A Supplier or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not own any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, or IMO.
- (b) 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 Supplier.

SEC. 4. *Obligations of a Supplier.* –

- (a) A Supplier shall secure a license from the ERC prior to engaging in the Supply of Electricity to End-users in any Contestable Market.
- (b) A Supplier, where applicable, shall functionally and structurally unbundle its supply business activities and rates from its generation and distribution businesses, if any, as presented in Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.
- (c) A Supplier shall identify and segregate the components of its Supplier’s Charge, as required by the Act and further provided in Rule 15 on Unbundling of Rates.
- (d) A Supplier shall comply with the WESM Rules.
- (e) A Supplier shall comply with any reportorial requirements prescribed by the ERC for monitoring purposes.
- (f) A Supplier shall comply with the Competition Rules to be prescribed by the ERC concerning abuse of market power, cartelization, and any other anti-competitive or discriminatory behavior.
- (g) A Supplier that fails to comply with any of these obligations shall be subject to fines and penalties imposed by the ERC and, as so required to protect the public interest, may have its license suspended, revised or revoked.

SEC. 5. *Licensing of Suppliers.* –

The ERC shall issue the appropriate licensing rules, guidelines and procedures for the issuance of licenses to Suppliers, which shall include but not limited to the following:

- (a) General Procedures for License Applications and Monitoring.
  - (i) The applicant shall submit all pertinent information and documents required by ERC for purposes of evaluating the application for a license to supply electricity to End-users in a Contestable Market.
  - (ii) Upon receipt of all the information required to evaluate compliance with the requirements applicable to obtaining a license to supply electricity to End-users in a Contestable Market, and upon demonstration of compliance with such requirements, the ERC shall issue the necessary resolution, order, and/or the appropriate license as a Supplier.
  - (iii) The ERC shall monitor the compliance of Suppliers with the requirements of their respective licenses and the rules and regulations applicable to Suppliers.
- (b) Qualification Criteria
  - (i) Compliance with Section 3 of this Rule 8.
  - (ii) Technical and Financial Standards, Creditworthiness Criteria and such financial security to secure proper performance as a Supplier as may be determined by the ERC to protect the interests of End-users in Contestable Markets.
  - (iii) Such other qualification or criteria as may be determined by the ERC to protect the public interest.

**RULE 9. WHOLESALE ELECTRICITY SPOT MARKET (WESM)**

SECTION 1. *Guiding Principle.* –

Pursuant to Section 30 of the Act, all WESM Participants shall comply with the WESM Rules.

*SEC. 2. Scope of Application. –*

This Rule shall apply to the Market Operator and all WESM Participants.

*SEC. 3. Organization. –*

Within one (1) year from the effectivity of the Act, the DOE shall establish a WESM composed of the WESM Participants. For this purpose, the DOE shall, jointly with Electric Power Industry Participants, promulgate the WESM Rules, and undertake actions including but not limited to the following:

- (a) Organize and establish the appropriate market design and governance structure of the WESM;
- (b) Pursuant to Section 30 of the Act, constitute the AGMO, which shall undertake the preparatory work and initial operation of the WESM;
- (c) Oversee the development of the WESM organization and necessary supporting infrastructure, including the funding requirements.

*SEC. 4. Membership. –*

Subject to compliance with the membership criteria specified in the WESM Rules, the following Persons shall be eligible to become members of the WESM:

- (a) Generation Companies;
- (b) Distribution Utilities;
- (c) Suppliers;
- (d) IPP Administrators;
- (e) End-users; and

- (f) Other similar Persons authorized by the ERC eligible to become members of the WESM.

*SEC. 5. The WESM Rules. –*

- (a) The WESM Rules shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity. The WESM Rules shall include rules governing the central scheduling and dispatch, and settlement of quantities sold and purchased under bilateral contracts in order to identify variations therefrom. The WESM Rules shall also reflect accepted economic principles and provide an open, competitive market for all WESM Participants.
- (b) Jointly with the Electric Power Industry Participants, the DOE shall formulate the detailed rules for the WESM, in accordance with the following principles:
  - (i) Provide an efficient, competitive, transparent and reliable spot market;
  - (ii) Ensure efficient operation of the WESM by the Market Operator in coordination with the system operator in a way which:
    - (1) Minimizes adverse impacts on system security;
    - (2) Encourages market participation; and
    - (3) Enables access to the market.
  - (iii) Subject to the provisions of Section 43 (u) of the Act, provide a cost-effective framework for resolution of disputes among WESM Participants, and between WESM Participants and the Market Operator;

- (iv) Provide for adequate sanctions in cases of breaches of the WESM Rules; and
  - (v) Provide efficient, transparent and fair processes for amending the WESM Rules.
- (c) The WESM Rules shall provide, among others, procedures for:
- (i) Establishing the Merit Order Dispatch Instructions for each time period for Central Dispatch;
  - (ii) Determining the market-clearing price for each time period;
  - (iii) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the WESM governing body;
  - (iv) Prescribing guidelines for the market operation in system emergencies;
  - (v) Amending the WESM Rules; and
  - (vi) Establishing the transition to full implementation of the WESM.
- (d) Methodology for Price Determination.
- The WESM Rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity. The price determination methodology contained in the WESM Rules shall be subject to the approval of the ERC.
- (a) A Market Operator in accordance with the WESM Rules shall implement the WESM. Not later than one (1) year after the implementation of the WESM, an independent entity, the IMO, shall be formed and the functions, assets and liabilities of the AGMO shall be transferred to such entity with the joint endorsement of the DOE and the Electric Power Industry Participants: *Provided*, That the IMO shall be financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity market.
  - (b) Subject to Technical Constraints, the grid operator of the TRANSCO or its Buyer or Concessionaire shall provide Central Dispatch of all Generation Facilities 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.
  - (c) The Market Operator shall have the following functions and responsibilities:
    - (i) Operate and administer the WESM and allocate resources to enable it to operate and administer the market, in accordance with the WESM Rules;
    - (ii) Determine the dispatch schedule of all facilities in accordance with the WESM Rules. Such schedule shall be submitted to the grid operator of the TRANSCO or its Buyer or Concessionaire;
    - (iii) Monitor daily trading activities in the market;
    - (iv) Oversee transaction billing and settlement procedures; and

SEC. 6. *The Market Operator.* –

- (v) Maintain and publish a register of all WESM Participants and must update and publish the register whenever a Person becomes or ceases to be a WESM Participant.

SEC. 7. *Constitution of the AGMO.* –

The DOE shall, within one (1) year from the effectivity of the Act, constitute the AGMO which shall undertake the preparatory work and initial operation of the WESM.

(a) AGMO Governing Board.

The AGMO shall be governed, and its powers and functions exercised, by a governing body with equitable representation from Electric Power Industry Participants. The representatives of the AGMO governing body shall be selected, in accordance with the WESM Rules. The DOE Secretary shall chair the AGMO.

(b) Composition.

Any sectoral representation on the AGMO governing body should as far as possible meet the following criteria:

- (i) Representatives of each sector of the Philippine electric power industry on the governing body should be reflective of that sector’s size in relation to the electric industry as a whole;
- (ii) The number of representatives of each sector of the Philippine electric power industry should be such that no one sector of the industry can dominate proceedings or decision-making by the governing body; and be selected in such a way that deadlocks in decision making will be avoided; and
- (iii) There should be independent members on the governing body.

(c) Powers and Duties.

The following are the powers and duties of the AGMO governing body:

- (i) Govern the operation of the WESM until the formation or the selection of an IMO;
  - (ii) Develop and adopt guidelines for the efficient, competitive, transparent and reliable management and operation of the market in accordance with WESM Rules;
  - (iii) Adopt and set internal procedures for the conduct of meetings and determination of a quorum; and
  - (iv) Perform the preparatory work (information technology system development, testing, and trial operation) and initial operation of the WESM with support from the DOE.
- (d) Not later than one (1) year after the implementation of the WESM, the AGMO shall transfer its functions, assets and liabilities to the IMO.

SEC. 8. *Functions and Responsibilities of TRANSCO with respect to the WESM.* –

The TRANSCO shall provide administrative supervision to AGMO.

SEC. 9. *Market Fees.* –

- (a) The cost of administering and operating the WESM shall be recovered by the IMO through a charge imposed on all WESM Participants or WESM transactions, provided such charge shall be filed with and approved by the ERC, consistent with the WESM Rules.
- (b) The structure of Market Fees should be transparent and should not discriminate against a category or categories of WESM

Participants.

- (c) Upon the approval of ERC, the Market Operator shall publish the structure of Market Fees, the methods used in determining the structure and an assessment of the extent to which the structure complies with the principles specified above, at least three (3) months prior to the implementation of WESM.

**SEC. 10. *Market Suspension.* –**

In cases of national or international security emergencies or natural calamities, the ERC is empowered to suspend the operation of the WESM or declare a temporary WESM failure in accordance with the procedures set out in the WESM Rules.

**RULE 10. STRUCTURAL AND FUNCTIONAL UNBUNDLING OF ELECTRIC POWER INDUSTRY PARTICIPANTS**

**SECTION 1. *Guiding Principle.* –**

Consistent with the last paragraph of Section 36 of the Act, any Electric Power Industry Participant shall structurally and functionally unbundle its business activities in accordance with Section 5 of the Act, namely: generation, transmission, distribution and supply. Structural unbundling shall mean the separation of different activities through the creation of separate divisions or departments within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities. Functional unbundling shall mean the separation of functions into different components. For this purpose, business activities resulting from the initial unbundling process may be further unbundled to widen the scope for competitive activities. The ERC shall formulate the appropriate guidelines and shall ensure full compliance with this provision.

**SEC. 2. *Scope of Application.* –**

This Rule shall apply to all Electric Power Industry Participants that are currently engaged or will be engaged in any of the following business activities:

- (a) Power generation;
- (b) Transmission;
- (c) Distribution;
- (d) Supply of Electricity including collection and metering;
- (e) Related businesses which utilize the generation, transmission, distribution or supply assets for non-electricity related services; and
- (f) Other electricity related services that may be identified and authorized by the ERC.

The ERC may relax or eliminate the unbundling requirements for specified business activities if such activity operates in a competitive market.

**SEC. 3. *Procedures for the Structural and Functional Unbundling of Business Activities.* –**

The following shall govern all Electric Power Industry Participants in undertaking the structural and functional unbundling of its business activities:

- (a) An Electric Power Industry Participant shall identify its business activities according to each major business function as defined in Section 2 of this Rule.
- (b) An Electric Power Industry Participant shall prepare and submit for approval by the ERC its Business Separation and Unbundling Plan (BSUP) on or before 31 December 2002.

(c) The BSUP shall contain among others, the following information:

(i) A complete description of the separation of books and records, including but not limited to, sources of revenues, costs as allocated, asset transferred, and information systems separation;

(ii) A comprehensive description of the functional, structural or juridical separation of generation, distribution and supply as provided for in the BSUP;

(iii) Milestones and highlights of the planned structural and functional unbundling of the business activities in which the Electric Power Industry Participant is currently engaged: *Provided*, That in any case, no Electric Power Industry Participant that has not completed structural and functional unbundling of the business shall be eligible to participate in Retail Competition and Open Access;

(iv) A plan for complying with all Code of Conduct provisions specified by ERC, including training or developmental programs for its employees to help ensure compliance; and

(v) Other documents or information as may be required by the ERC.

(d) The ERC may adopt the Electric Power Industry Participant's BSUP, recommend modifications to the BSUP, or reject the BSUP for revision and direct the concerned Electric Power Industry Participant to file a new BSUP based on its comments. In any case, ERC shall render its decision within six (6) months from filing of the BSUP.

(e) Upon receipt of the ERC decision, the Electric Power Industry Participant

shall implement said decision fully and promptly.

(f) The ERC shall provide for appropriate fines and penalties for any Electric Power Industry Participant that fails to comply with its decision in full.

#### SEC. 4. *Guiding Principles for Business Separation of Distribution Utilities.* –

(a) Once a Distribution Utility has separated and unbundled its business activities, the Distribution System portion of its business shall no longer provide competitive energy services, i.e. generation and supply.

A Distribution Utility, which has not structurally and functionally unbundled its business activities shall be prohibited from operating in a Contestable Market.

(b) ECs shall follow the structural and functional unbundling procedures set forth in these Rules except that such unbundling shall be implemented no later than 26 June 2006, the start of Retail Competition and Open Access in the Franchise Areas of ECs.

### **RULE 11. CROSS OWNERSHIP, MARKET ABUSE AND ANTI-COMPETITIVE BEHAVIOR**

#### SECTION 1. *General Principle.* –

No Electric Power Industry Participant or any other Person may engage in any anti-competitive behavior including, but not limited to, crosssubsidization, price or market manipulation, false or deceptive marketing, or other unfair trade practices detrimental to the encouragement and protection of Contestable Markets or the WESM.

#### SEC. 2. *Scope of Application.* –

This Rule shall apply to all Persons, including all Electric Power Industry Participants, such as but not limited to Generation Companies,

subsidiaries and Affiliates of Generation Companies, stockholders and officials of Generation Companies, IPP Administrators, Distribution Utilities, Suppliers, NPC, and the TRANSCO or its Buyer or Concessionaire.

SEC. 3. *Prohibition of Cross Ownership.* –

- (a) Pursuant to Section 45 of the Act, no Generation Company, IPP Administrators, Distribution Utility or Supplier, their respective subsidiaries, Affiliates, stockholders, directors or officers or other entity engaged in generating and supplying electricity specified by ERC, shall hold any interest, directly or indirectly, in the TRANSCO or its Buyer or Concessionaire, or the Market Operator.
- (b) TRANSCO or its Buyer or Concessionaire and any of its stockholders, directors or officers 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, IPP Administrators, Distribution Utility or Supplier.
- (c) 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, IPP Administrators, Distribution Utility or Supplier.
- (d) This Section shall not apply to PSALM in the course of its Privatization of NPC assets pursuant to Sec. 47 of the Act.

SEC. 4. *Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity.* –

- (a) No company, Related Group or IPP Administrator, singly or in combination, can own, operate or Control more than thirty percent (30%) of the installed generating capacity of a Grid and/or

twenty-five percent (25%) of the national installed generating capacity: *Provided*, That such restrictions shall not apply to PSALM or NPC during the time that its assets are being privatized pursuant to Section 47 of the Act and isolated grids that are not connected to the high voltage transmission system. The ERC shall determine the installed generating capacity in a Grid and the national installed generating capacity.

- (b) The capacity of such facility shall be credited to the entity controlling the terms and conditions of the prices or quantities of the output of such capacity sold in the market in cases where different entities own the same Generation Facility.

In cases where different Persons own, operate or Control the same Generation Facility, the capacity of such facility shall be credited to the Person controlling the capacity of the Generation Facility.

SEC. 5. *Limits on Bilateral Supply Contracts by a Distribution Utility.* –

- (a) A Distribution Utility may enter into bilateral power supply contracts subject to the provisions of Section 5 of Rule 30 on NPC Offer of Transition Supply Contracts and a review by the ERC: *Provided*, That such review shall only be required for a Distribution Utility whose level of Open Access has not reached household demand level.
- (b) No Distribution Utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an Affiliate engaged in generation, but such limitation shall not prejudice contracts entered into prior to the effective date of the Act.

This limitation shall apply regardless of whether demand is expressed in terms of capacity or energy.



SEC. 6. *Encouragement of Participation in the WESM.* –

For the first five (5) years from the establishment of the WESM, no Distribution Utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

SEC. 7. *ERC Responsibilities.* –

- (a) ERC shall enforce the competitive safeguards specified in this Rule in order to promote true market competition and prevent harmful monopoly and market power abuse. However, ERC shall not apply the limitations specified in this Rule to isolated grids that are not connected to the Grid.
- (b) ERC shall have the authority to determine the appropriate Grid or Grids to use in the application of this Rule when two or more of the three separate Grids become sufficiently interconnected to constitute a single Grid or as conditions may otherwise permit.
- (c) ERC shall, within one (1) year from the effectivity of the Act, promulgate Competition Rules to ensure and promote competition, encourage market development and customer choice and discourage or penalize abuse of market power, cartelization and any anticompetitive or discriminatory behavior, or unfair trade practice that distorts competition or harms consumers. Such Rules shall define relevant markets for the purpose of establishing abuse or misuse of market power, areas of isolated grids that are not connected to the high voltage transmission system, and the reportorial requirements of Electric Power Industry Participants as may be necessary to enforce the provisions of Section 45 of the Act.

- (d) ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or unduly discriminatory act or behavior, or any unfair trade practice that distorts competition or harms consumers, by any Electric Power Industry Participant. Upon a finding of a prima facie case that an Electric Power Industry Participant has engaged in such act or behavior, the ERC shall after due notice and hearing, stop and redress the same. Such remedies shall, without limitation, include the separation of the business activities of an Electric Power Industry Participant into different juridical entities, the imposition of bid or price controls, issuance of injunctions in accordance with the *Rules of Court*, divestment or disgorgement of excess profits, and imposition of fines and penalties pursuant to Section 46 of the Act.
- (e) ERC shall, within one (1) year from the effectivity of the Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with its rights to due process.

SEC. 8. *Anti-Competitive Behavior and Other Unfair Trade Practices.* –

The ERC shall promulgate Competition Rules prohibiting, and specifying appropriate penalties and other remedies for, any contract, combination or conspiracy that unreasonably restricts competition in any market for electricity, or any conduct that constitutes an abuse of market power or an attempted monopolization of any market for electricity, including but not limited to the following:

- (a) Fixing prices of products or services: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, to fix, peg or stabilize the price

of any product or service. Price fixing shall be deemed to include agreements on bids, price floors, price ceilings, pricing formulas and resale prices, and agreements on credit or any other terms of a transaction between a buyer and a seller.

- (b) Fixing output of products or services: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, to fix, limit or otherwise determine their output of any product or service.
- (c) Customer, Product, Service or Territorial Divisions: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, as to the customers or the geographic territories they will serve, or the products or services they will sell.
- (d) Tying: Electric Power Industry Participants shall not use a position of market power to condition the sale of one product or service on the purchase of another product or service. No Distribution Utility shall make access to its Distribution System contingent upon the purchase of generation, metering, billing or other services.
- (e) Physical or Economic Withholding: Electric Power Industry Participants shall not use physical operating practices or bidding strategies that limit the market participation of a generation unit under conditions that will result in significant increases in market prices.
- (f) Discriminatory provision of regulated distribution or transmission services: Regulated distribution and transmission services shall be provided on a basis that is not unduly discriminatory. Examples of unduly discriminatory behavior include,

but not limited to the following:

- (i) A Distribution Utility or TRANSCO or its Buyer or Concessionaire refuses to interconnect Generation Company, IPP Administrator, or Supplier other than for reasons of system security or reliability or reasonable financial or credit considerations pursuant to the Grid or Distribution Codes or commission of acts constituting grounds for suspension of the service under any applicable rule and regulation.
- (ii) A Distribution Utility or TRANSCO or its Buyer or Concessionaire gives a Generation Company, IPP Administrator, or Supplier, including without limitation any of the Distribution Utility's Affiliates, any preference or advantage over any other Generation Company, IPP Administrator, or Supplier in processing a request for Transmission or Distribution of Electricity.
- (iii) A Distribution Utility or TRANSCO or its Buyer or Concessionaire gives a Generation Company, IPP Administrator, or Supplier, including without limitation any of the Distribution Utility's Affiliates, any preference or advantage in the dissemination or disclosure of customer or transmission or Distribution System information, and any such information that has not been made available to all Electric Power Industry Participants at the same time and in a non-discriminatory manner.
- (iv) A Distribution Utility or TRANSCO or its Buyer or Concessionaire provides any preference or advantage to any Supplier in the disclosure of information about operational status and availability of the Distribution System and transmission system.

(v) A Distribution Utility does not provide all regulated services, and does not apply Distribution Wheeling Charges to any Supplier that is not an Affiliate, in the same manner as it does for itself or its Affiliates. TRANSCO or its Buyer or Concessionaire shall provide all regulated services and shall apply Transmission Charges to any Electric Power Industry Participant in the same manner as it does for PSALM or NPC.

(g) Misrepresentation or false advertising of a Distribution Utility: A Distribution Utility or its Affiliate shall not state or imply that any distribution service provided to an Affiliate is inherently superior, solely on the basis of Affiliate’s relationship with the Distribution Utility, to that provided to any other Supplier.

(h) Cross-Subsidization: Consistent with Section 26 of the Act, a Distribution Utility shall not use its revenues or resources from regulated distribution services to reduce the cost or price of its competitive services (generation or supply).

## **RULE 12. RETAIL COMPETITION AND OPEN ACCESS**

### *SECTION 1. Guiding Principle. –*

Pursuant to Section 31 of the Act, Retail Competition and Open Access shall be implemented no later than three (3) years from the effectivity of the Act.

### *SEC. 2. Scope of Application. –*

The provision of open and non-discriminatory access to the transmission system and Distribution Systems shall apply to the following:

- (a) WESM Participants;
- (b) TRANSCO or its Buyer or Concessionaire;

- (c) Distribution Utilities;
- (d) EZs;
- (e) Suppliers;
- (f) IPP Administrators;
- (g) Market Operator; and
- (h) End-users in Contestable Markets.

### *SEC. 3. Conditions for Declaring Initial Implementation of Open Access. –*

The ERC shall, after due notice and public hearing, declare initial implementation of Open Access not later than three (3) years from the effectivity of the Act, subject to the following conditions:

- (a) Establishment of the WESM.

For this purpose, the “establishment” of the WESM shall be deemed to have occurred upon the effectivity of the Market Rules by the DOE and initial operation of the AGMO pursuant to Rule 9 on the Wholesale Electricity Spot Market (WESM).

- (b) Approval of unbundled Transmission and Distribution Wheeling Charges.

The ERC shall approve the unbundled rates of NPC and Distribution Utilities, which shall include the transmission and wheeling charges, within one (1) year from the effectivity of the Act.

- (c) Initial implementation of the Cross Subsidy Removal scheme.

For this purpose, initial implementation of the cross subsidy removal scheme shall occur on the next billing period after the issuance of ERC approval. The scheme for cross subsidy removal shall include guidelines or a schedule for the removal of each type of cross subsidy and may be

altered, modified and/or amended by the ERC pursuant to Rule 16 on Removal of Cross Subsidies.

- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

#### SEC. 4. Specification of the Contestable Market for Open Access. –

Upon the initial implementation of Open Access, the ERC shall allow all electricity End-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the Contestable Market. Two (2) years thereafter, the threshold level for the Contestable Market shall be reduced to seven hundred fifty kilowatts (750 kW). At this level, Aggregators shall be allowed to supply electricity to End-users whose aggregate monthly average peak demand within a Contiguous Area is at least seven hundred fifty kilowatts (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce the threshold level until it reaches the household demand level. In the case of ECs, Retail Competition and Open Access shall be implemented not earlier than five (5) years from the effectivity of the Act.

### **RULE 13. MISSIONARY ELECTRIFICATION**

#### SECTION 1. *Guiding Principle.* –

- (a) Pursuant to Section 70 of the Act, the SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.

- (b) The Missionary Electrification function of SPUG shall be funded from the revenues from sales in the missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.

- (c) The DOE's Missionary Electrification Development Plan (MEDP) shall include capital investment and operations regarding capacity additions in existing missionary areas and the facilities to be provided in other areas not connected to the transmission system.

- (d) The DOE shall, no later than ninety (90) days from the promulgation of these Rules, issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties, including Distribution Utilities and qualified third parties, as provided for in Section 23 and Section 59 of the Act, can participate in the Missionary Electrification projects set forth in the MEDP.

- (e) The SPUG shall continue to endeavor to privatize its power generation facilities and the necessary associated power delivery systems.

#### SEC. 2. *Scope of Application.* –

This Rule shall apply to all entities and areas identified in the MEDP.

#### SEC. 3. *Obligations of SPUG.* –

- (a) SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the Grid and cannot be serviced by Distribution Utilities and other qualified third parties.
- (b) SPUG shall periodically assess the requirements and prospects for bringing its functions to commercial viability on an area-by-area basis at the earliest possible

time, including a program to encourage private sector participation.

- (c) Whenever feasible, SPUG shall utilize Renewable Energy Resources.
- (d) SPUG shall file for review and approval its unbundled rates following Rule 15 on Unbundling of Rates.
- (e) SPUG shall file a petition to the ERC with respect to the Missionary Electrification portion of the Universal Charge as prescribed in Rule 18 on Universal Charge.
- (f) PSALM shall ensure that SPUG conducts proper monitoring, accounting and control of expenditures, and efficient utilization of the Missionary Electrification funds from the Universal Charge.

**SEC. 4. *Source of Funds.* –**

- (a) The Missionary Electrification shall be funded from the revenues from sales in missionary areas and from its appropriate share in the Universal Charge.
- (b) SPUG may also draw on other funding sources including appropriations from Congress, the utilization of private capital, multilateral aids or grants, Official Development Assistance (ODA) Funds and others.
- (c) SPUG shall source all the cost differentials between the sales revenues and operating expense and capital expense for expansion, rehabilitation and facilities for new areas of development based on the approved MEDP from its share from the Universal Charge and/or other sources as it may obtain.
- (d) In accordance with DOE's MEDP, the proposed five- (5) year annual budget for operating and capital expenditures of SPUG shall be submitted to ERC.

**SEC. 5. *Reliability Improvement.* –**

- (a) To improve systems reliability, the SPUG shall install transmission systems in all qualified areas under the coverage of SPUG. Priority will be given to areas showing big growth in its electricity demand.
- (b) SPUG shall also collect revenues in providing power delivery and Ancillary Service to Generation Companies or Distribution Utilities at a rate to be filed with and approved by ERC. In the absence of such rate, SPUG shall use the applicable major Grids' rate.
- (c) SPUG shall cease providing Missionary Electrification to areas interconnected to the transmission system.

**RULE 14. PROVISION OF ELECTRICITY BY QUALIFIED THIRD PARTIES**

**SECTION 1. *Guiding Principle.* –**

Pursuant to Section 59 of the Act, the provision of electric service in remote and Unviable Areas that the Distribution Utility is unable to service for any reason shall be opened to other qualified third parties. The provision of electricity in Unviable Areas by qualified third parties shall be a regulated business.

**SEC. 2. *Scope of Application.* –**

This Rule shall apply to third parties qualified and authorized by ERC in accordance with the Act to undertake the provision of electric service in remote and Unviable Areas that a Distribution Utility is unable to serve.

**SEC. 3. *Determination of Remote and Unviable Areas.* –**

Every September, the DOE shall issue a declaration of all the remote and Unviable Areas that cannot be served by a Distribution Utility within the following three (3) years.

The declaration shall be consistent with the PDP and made in consultation with the NEA and Distribution Utilities. The remote and Unviable Areas specified in the declaration shall be open for participation by qualified third parties.

**SEC. 4. *Determination of Qualified Third Parties.*** –

The DOE shall set criteria for determining qualified third parties that may participate in providing electricity to remote and Unviable Areas. These criteria may include financial, technical, environmental, and other indices of performance.

The criteria shall give preference to parties that would utilize least-cost new Renewable Energy Resources in providing electricity.

**SEC. 5. *Rights and Obligations of Qualified Third Parties.*** –

- (a) Any Distribution Utility that fails to provide electricity to an Unviable Area shall be required by the ERC to enter into a contract with a qualified third party to provide electric service in such an Unviable Area.
- (b) A qualified third party shall comply with all applicable provisions of the Distribution Code, including the requirement to obtain a COC for its Generation Facilities and other permits the ERC may require.
- (c) A qualified third party shall charge rates in Unviable Areas according to ERC rules for cost recovery of Generation Facilities and associated power delivery systems.
- (d) A qualified third party shall submit annual financial statements to ERC for determining the effectiveness of the approved rate.
- (e) A qualified third party shall report annually to DOE the rate of electrification of its coverage areas.

**SEC. 6. *Obligations of the ERC.*** –

- (a) The ERC shall set guidelines for the issuance of permits to qualified third parties that serve a remote or unserved and Unviable Area within the Distribution Utility's Franchise Area.
- (b) The ERC shall set the rules in computing rates that allow full cost recovery of the Generation Facilities and delivery systems built to serve remote or unserved and Unviable Areas.

**PART III – ELECTRICITY RATE AND CHARGES**

**RULE 15. UNBUNDLING OF RATES**

**SECTION 1. *Guiding Principle.*** –

Consistent with Section 36 of the Act and Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants, this Rule on the Unbundling of Rates shall result in the identification and separation of the individual charge for providing a specific electric service to any End-user for generation, transmission, distribution, and supply.

**SEC. 2. *Scope of Application.*** –

This Rule shall apply to all Electric Power Industry Participants that are currently engaged or will be engaged in any of the business activities as stated in Section 5 of the Act.

**SEC. 3. *Parameters for Unbundling Rates and Costs of Service.***

- (a) An Electric Power Industry Participant shall identify, separate and unbundle its rates, charges, and costs in accordance with Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.
- (b) In the determination of eligible costs of service to be charged to the End-users, the ERC shall establish the minimum

efficiency standards covering the technical, financial, and customer service performance criteria including systems losses, and interruption frequency rates parameters among others.

- (c) The rate base of the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall exclude management inefficiencies, such as but not limited to cost of project delays not due to any force majeure, and penalties and related interest during construction and other disallowances to be determined by ERC.
- (d) Interest expenses shall not be allowed as deductions from permissible Return on Rate Base (RORB).
- (e) TRANSCO or its Buyer or Concessionaire and Distribution Utilities may directly or indirectly engage in any related business which maximizes the utilization of their assets.

SEC. 4. *Method of Rate Unbundling.* –

The ERC shall prescribe the methodology for rate unbundling.

SEC. 5. *Ratemaking Design and Methodology.*  
–

- (a) The ERC shall, in the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and Retail Rates for the Captive Market of a Distribution Utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities, as well as the expansion or improvement of the Transmission facilities pursuant to a plan approved by the ERC under Section 10 of Rule 6 on Transmission Sector, and the Distribution Utilities under Rule 7 on Distribution Sector. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable RORB to enable the entity to operate viably.

The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory and shall take into consideration, among others, the franchise tax. To achieve this objective and to ensure the complete removal of crosssubsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

- (i) For purposes of determining the rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
- (ii) Interest expenses are not allowable deductions from permissible RORB;
- (iii) In determining eligible cost of services that will be passed on to the End-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO or its Buyer or Concessionaire and Distribution Utilities including systems losses, interruption

frequency rates, and collection efficiency;

- (iv) Further, in determining rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays;
  - (v) Any significant operating costs or project investments of the TRANSCO or its Buyer or Concessionaire and Distribution Utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest; and
  - (vi) The interest incurred during construction may be capitalized and included in the rate base upon commissioning of the asset.
- (b) The Retail Rates charged by Distribution Utilities for the Supply of Electricity in their Captive Market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

Every Distribution Utility or Supplier to the Contestable Market, whichever is applicable, shall identify and segregate in its bills to Endusers the components of the Retail Rate as follows: generation, transmission, distribution, supply and other related charges for electric service.

- (c) In the case of isolated, remote and Unviable Areas serviced by a qualified third party as defined in Rule 14 on Provision of Electricity by Qualified Third Parties, the ERC shall set the rules for rates computation and determination.
- (d) The ERC shall recognize the different cost structures in serving isolated areas.

#### SEC. 6. *Unbundled Rate Filing Requirements.*

–

- (a) As required by the Act, NPC and Distribution Utilities shall file within six (6) months from the effectivity of the Act for revised rates with costs and other relevant accounts unbundled by business activity.
- (b) The ERC shall within six (6) months from the date of submission of revised rates by the Distribution Utility, notify the Distribution Utility of the action taken on the application.
- (c) The rate filing petition shall commence with the unbundling the cost components of the historical test year costs, from which the new Retail Rates and unbundled rates or charges are to be developed. The historical test year, for this purpose, shall be the twelve (12) months ending 31 December 2000.
- (d) Each rate filing petition for unbundled cost of service shall contain detailed schedules, data, and other relevant information deemed necessary by the ERC.

### **RULE 16. REMOVAL OF CROSS SUBSIDIES**

#### SECTION 1. *Guiding Principle.* –

Pursuant to Section 74 of the Act, cross subsidies within a Grid, between Grids, and/or classes of customers shall be phased out in a period not exceeding three (3) years from the establishment by the ERC of a Universal



Charge which shall be collected from all electricity End-users. Such level of cross subsidies shall be made transparent and identified separately in the billing statements provided to End-users by the Suppliers.

*SEC. 2. Scope of Application. –*

This Rule shall apply to NPC, TRANSCO or its Buyer or Concessionaire, Distribution Utilities and PSALM.

*SEC. 3. Calculation of Cross Subsidies. –*

- (a) The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential End-user; or would have an immediate, irreparable, and adverse financial effect on Distribution Utility.
- (b) The cross subsidy between Grids in the rates of NPC shall be calculated on a net basis for each Grid as the difference between:
  - (i) The total revenues that would have been collected on the Grid under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
  - (ii) The total unbundled true cost of service on the Grid as submitted in accordance with Rule 15 on Unbundling of Rates and the rate filing requirements that the ERC may issue pursuant to Rule 15, using the same historical test year.
- (c) The cross subsidy within each Grid in the rates of NPC shall be calculated on a net basis for each customer class within the Grid as the difference between:

- (i) The total revenues that would have been collected from a customer class under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
  - (ii) The total unbundled true cost of service for the same customer class as submitted in accordance with Rule 15 on Unbundling of Rates and the rate filing requirements that ERC may issue pursuant to Rule 15, using the same historical test year.
- (d) The cross subsidy between customer classes within each Distribution Utility shall be calculated on a net basis for each customer class as the difference between:
    - (i) The total revenues that would have been collected from a customer class under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
    - (ii) The total unbundled true cost of service for the customer class as submitted in accordance with Rule 15 on Unbundling of Rates and the rate filing requirements that ERC may issue using the same test year.

*SEC. 4. Procedures for Handling Cross Subsidies. –*

- (a) Pending the complete removal of cross subsidies, each subsidy rate level shall be shown as a separate item in customer billing statements.
- (b) The ERC shall establish a cross subsidy charge to account for all forms of cross subsidies that remain during the phase out period as described in Section 5 of this Rule, to be recovered from all electricity

End-users through the Universal Charge pursuant to Rule 18 on the Universal Charge.

SEC. 5. *Scheme for Phasing Out Cross Subsidies.* –

- (a) The ERC shall issue a scheme for phasing out all cross subsidies, including subsidies within Grids, between Grids, and between classes of customers. The phasing out period shall not exceed three (3) years from the establishment of the Universal Charge pursuant to Rule 18 on Universal Charge. The initial implementation of the phase out scheme shall occur on the next billing period after issuance of ERC approval.
- (b) The phase out scheme shall be designed to mitigate the effects of the removal of the cross subsidies. The ERC shall determine which Endusers shall continue to receive subsidies and the level of subsidies such End-users shall receive during the phase out period.
- (c) Together with their filings of unbundled rates reflecting the true costs of service, pursuant to Rule 15 on Unbundling of Rates, NPC and the Distribution Utilities shall file with ERC their proposals for the removal of cross subsidies among the End-users they serve to be considered by ERC in the formulation of the phase out scheme.
- (d) The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential End-user; or would have an immediate, irreparable, and adverse financial effect on a Distribution Utility. Distribution Utilities shall submit to ERC such information as ERC may specify to help it determine if the cross subsidy removal mechanism should be extended

under this provision.

- (e) If ERC does not extend the period for removal of cross subsidies, the cross subsidies between regions, within regions, and between customer classes shall cease to exist at the end of the three (3) year period from the establishment of the Universal Charge.

SEC. 6. *Exemption from Cross Subsidy Removal for Distribution Utilities.* –

The threshold consumption levels and the Lifeline Rates determined by the ERC shall be exempted from the prohibition on cross subsidies between classes of customers of a Distribution Utility for a period of ten (10) years, unless extended by law.

**RULE 17. STRANDED DEBTS  
AND CONTRACT COSTS RECOVERY**

SECTION 1. *Guiding Principle.* –

Pursuant to Sections 32 and 33 of the Act, there are three (3) types of stranded costs recoverable through the Universal Charge:

- (a) Stranded Debts;
- (b) Stranded Contract Costs of NPC; and
- (c) Stranded Contract Costs of Eligible Contracts of Distribution Utilities.

SEC. 2. *Scope of the Application.* –

This Rule shall apply to NPC, PSALM and Distribution Utilities with IPP contracts approved by the ERB as of 31 December 2000.

SEC. 3. *Procedures and Methodology for Stranded Cost Determination.* –

- (a) PSALM and any Distribution Utility that has an eligible contract shall file with ERC their respective petitions for cost recovery under the Universal Charge and include therewith the methodology

in determining stranded costs. The ERC shall review the methodology submitted by PSALM and such Distribution Utility to determine, fix, and approve the level of stranded costs.

- (b) At the end of the first year of the implementation of stranded cost recovery and every year thereafter, the ERC shall conduct a review to determine whether there is an under- or over recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In determining whether there is an under- or over recovery and in determining the stranded cost recovery portion of the Universal Charge for the subsequent period, the ERC shall base the calculation on the following information submitted by the PSALM and the Distribution Utility which has an eligible contract:
  - (i) a report of the amounts recovered for stranded costs during the past year; and
  - (ii) revised stranded cost amounts based on current market information.

*SEC. 4. NPC Stranded Debt and Stranded Contract Cost Recovery. –*

- (a) Consistent with Section 32 of the Act, the National Government shall directly assume a portion of the financial obligations of NPC transferred to PSALM in an amount not to exceed Two Hundred Billion Pesos (P 200,000,000,000.00).
- (b) The following guidelines shall govern the recovery by the PSALM of the Stranded Debts and Stranded Contract Costs of NPC:
  - (i) PSALM shall calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC that shall form part of the Universal Charge to be determined, fixed, and approved by

the ERC and reviewed by the same body annually. In determining the amount of Stranded Contract Costs of NPC, PSALM may include in such calculation the principal amount and interest expenses of any such debt raised by PSALM to finance the buyout or buy-down of any eligible IPP contract, i.e. contracts approved by the ERB as of 31 December 2000 as well as any other costs and expenses incurred in connection with such buyout or buy-down: *Provided*, That the amount recoverable by PSALM from the Universal Charge fund shall not exceed the estimated Stranded Contract Costs of such eligible IPP Contract, assuming that such buy-out or buy-down never occurred: *Provided, further*, That PSALM demonstrates to the ERC's satisfaction that such buy-out or buy-down will benefit electricity consumers by reducing that component of the Universal Charge attributable to such IPP contract.

- (ii) The ERC shall verify the reasonable amounts of claims petitioned by PSALM and determine the manner and duration by which full recovery of Stranded Debt and Stranded Contract Costs of NPC is attained: *Provided*, That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years.
- (iii) Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement. The ERC shall monitor and ensure that there is a separate item in the consumer billing statement for stranded cost recovery.

*SEC. 5. Recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities. –*

- (a) Within one (1) year from the start of Retail Competition and Open Access, a Distribution Utility that seeks to recover stranded contract costs arising from its eligible contracts shall file with the ERC a notice of such intent together with an estimated amount of such obligations. The Distribution Utility shall provide all pertinent information as may be required by the ERC. Failure of the Distribution Utility to file within the date specified shall mean non-eligibility for such recovery.
- (b) A Distribution Utility shall recover stranded contract costs: *Provided, however,* That such costs of the IPPs of Distribution Utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC at the time they were contracted. The ERC shall take into consideration all factors that affect the total cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.
- (c) Any Distribution Utility which seeks to recover stranded costs shall have the duty to mitigate its potential stranded costs by exerting reasonable best efforts to:
- (i) Reduce the costs of its existing eligible contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and
  - (ii) Submit to an annual earnings review by the ERC and use its earnings above its authorized rate of return to reduce the book value of contracts until the end of the stranded cost recovery period.
- (d) The Distribution Utility shall submit to the ERC, during its filing for stranded contract cost recovery, its detailed plan and strategy to mitigate stranded contract costs.
- Other mitigating measures that are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the Distribution Utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.
- (e) Within three (3) months from the submission of the application for stranded cost recovery by the relevant Distribution Utilities, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of the Stranded Contract Costs of Eligible Contracts of Distribution Utilities: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. For this purpose, “full recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities” shall mean recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities authorized by the ERC after its pertinent review. Any amount to be included for the recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities shall be reflected as a separate item in the consumer billing statement.
- (f) In the case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund (STF) created pursuant to Section 34 of the Act. A separate account shall be created for this purpose that shall be held in trust for any future claims of Distribution Utilities for the recovery of their respective Stranded Contract Costs of Eligible Contracts of Distribution Utilities. At the end of the stranded cost recovery period, any remaining amount

or balance in this account shall be used to reduce the electricity rates to the End-users.

- (g) A Distribution Utility, which has an eligible contract, duly authorized by the ERC, shall submit to ERC quarterly reports showing the amount of stranded contract costs recovered and the balance remaining to be recovered from the Universal Charge.

Quarterly shall mean the calendar quarters of January 1 to March 31 (first quarter), April 1 to June 30 (second quarter), July 1 to September 30 (third quarter), and October 1 to December 31 (fourth quarter). The relevant Distribution Utility shall submit to the ERC the quarterly reports within thirty (30) days from the end of each calendar quarter.

- (h) Upon a finding by the ERC that a Distribution Utility which seeks to recover stranded contract costs has failed to comply with its mitigation obligation under Section 33 of the Act, the ERC may not allow the recovery of stranded contract costs: *Provided*, That if there is any fraud or misrepresentation by the Distribution Utility, the ERC may impose appropriate penalties in accordance with Section 46 of the Act.

## **RULE 18. THE UNIVERSAL CHARGE**

### **SECTION 1. *Guiding Principle.* –**

Within one (1) year from the effectivity of the Act, there shall be a Universal Charge to be determined, fixed and approved by the ERC that shall be imposed on all electricity End-users, including self-generation entities.

### **SEC. 2. *Scope of Application.* –**

This Rule shall apply to the following:

- (a) Petitioners for availments from the Universal Charge.

- (i) PSALM for the Stranded Debts and Stranded Contract Costs of NPC;
- (ii) Distribution Utilities with respect to their Stranded Contract Costs of Eligible Contracts;
- (iii) Missionary Electrification;
- (iv) Qualified Generation Companies with respect to the equalization of taxes and royalties between indigenous or Renewable Energy Resources and imported fuels;
- (v) NPC, with respect to the environmental charge of P 0.0025 per kilowatt-hour sales to be used for the rehabilitation and management of watershed areas; and
- (vi) NPC/PSALM and Distribution Utilities with respect to the mitigation of the removal of cross subsidies.

- (b) Electricity End-users such as but not limited to:

- (i) All End-users of Distribution Utilities such as residential, commercial, and industrial including government and/or public buildings, irrigation systems, and special lightings;
- (ii) Directly-connected End-users of NPC such as but not limited to government agencies and institutions, and industrial enterprises;
- (iii) Persons using Self-Generation Facilities;
- (iv) Locators, developers, operators and facilities operating in EZs; and
- (v) Other entities identified by the ERC pursuant to the intent of the Act.

### **SEC. 3. *Mitigation on the Removal of Cross Subsidies.* –**

- (a) Unbundled rates of the NPC and the Distribution Utilities as approved by the ERC in accordance with Section 36 of the Act, shall reflect the respective costs of providing service to End-users without any type of cross subsidy. The removal of cross subsidies to the End-users of Distribution Utilities will however be mitigated and done gradually in accordance with Section 74 of the Act. ERC shall issue a phase out scheme to gradually remove the cross subsidies. Any amount of subsidy provided to End-users during the phase out period shall be recovered through the Universal Charge.
- (b) With respect to SPUG, rates for Missionary Electrification shall be in accordance with Rule 15 on Unbundling of Rates.

SEC. 4. *Procedures for Petitions Against the Universal Charge.* –

- (a) For the first year after the effectivity of the Act, the following rules shall apply:
  - (i) The petitioners identified in Section 2 of this Rule shall file their availments from the Universal Charge with the ERC on or before 15 March 2002 and submit all pertinent documents in support of such availments made and the basis for their computation.
  - (ii) The ERC shall evaluate the petitions and thereafter issue the corresponding order no later than 26 June 2002 which shall prescribe the following:
    - (1) The Universal Charge on a per kWh basis to be included in the billing statements to the End-users;
    - (2) Breakdown of the applicable Universal Charge for each of the intended purposes:

- (a) Stranded Debts and Stranded Contract Costs of NPC;
- (b) Missionary Electrification;
- (c) Equalization of taxes and royalties between indigenous or renewable sources of energy vis-à-vis imported energy fuels;
- (d) Environmental Charge of P 0.0025 per kilowatt-hour sales for the rehabilitation and maintenance of watershed areas; and
- (e) Mitigation Fund for the removal of cross-subsidies of NPC and Distribution Utilities.

- (3) Period of disbursement by each of the beneficiaries as well as submission of reportorial requirements prescribed by the ERC.
- (b) Petitions for availment under the Universal Charge for the succeeding years shall be submitted to the ERC on or before March 15 of every year.
- (c) A Distribution Utility that seeks to recover Stranded Contract Costs of its Eligible Contracts shall submit a petition for availment under the Universal Charge to the ERC within one (1) year from the start of Open Access. Within three (3) months from the submission of the petition by such Distribution Utility, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery thereof, as approved by the ERC.
- (d) With respect to the equalization of taxes and royalties applied to indigenous or renewable sources of energy, qualified

Generation Companies shall be entitled to make claims against STF created for this purpose. The STF shall be constituted out of the proceeds from the Universal Charge specified under Section 34 of the Act: *Provided*, That said claims shall only be to the extent of the additional cost or reduction in the cost of generating electricity. For this purpose, qualified Generation Companies making said claims shall submit a detailed statement of their sales and costs of operation, including a breakdown of how their claims are estimated and the impact thereof on generation rates, the corresponding assumption and justification therefor and such other information as may be required by the PSALM. Only those claims that meet the foregoing documentation requirements shall be evaluated and acted upon by PSALM.

- (e) Failure by any petitioner to submit its petition within the periods specified above shall result in a forfeiture of such petition for the period in question.
- (f) In case of over- or under-recovery by beneficiaries, true-up adjustments shall follow the rules and regulations to be prescribed by the ERC, except as otherwise provided in these Rules.

SEC. 5. *Collection of the Universal Charge.* –

- (a) The Universal Charge shall be a non-by passable charge that shall be collected from all End-users on a monthly basis by the Distribution Utilities or Suppliers in case of Contestable Markets. Any End-user or self-generation entity not connected to a Distribution Utility shall remit its corresponding Universal Charge directly to the TRANSCO. Collections by the Distribution Utilities shall be remitted to the PSALM on or before the fifteenth (15th) day of the succeeding month, net of any amount due to the Distribution Utility.

- (b) Separate books of accounts shall be maintained by the Distribution Utility and made available to the ERC for purposes of monitoring, verifying and accounting of amounts collected from the Universal Charge and remitted to the PSALM.

SEC. 6. *Administration of the Universal Charge.* –

- (a) Pursuant to the last paragraph of Section 34 of the Act, PSALM shall act as the administrator of the funds generated from the Universal Charge. For this purpose, the PSALM shall create a STF to be established in the Bureau of Treasury (BTr) or in a Government Financing Institution (GFI) that is acceptable to the DOF. Separate STFs shall be established for each of the intended purposes of the Universal Charge. Funds shall be disbursed in an open and transparent manner and shall only be used for the intended purposes specified in Section 3 of this Rule.
- (b) All qualified availments shall be approved and certified by the ERC. In this regard, PSALM, in consultation with the DOF, shall promulgate, within one (1) year from the effectivity of the Act and subject to the approval of the ERC, procedures and guidelines that shall govern all remittances to and disbursements from the STF.

- (c) The PSALM shall transfer funds from the STF and shall distribute to the beneficiaries on or before the twentieth (20th) day of each month.
- (d) The PSALM shall submit to the DOF and ERC a report on the remittances and disbursements against the fund on a quarterly basis.
- (e) Separate Books of accounts shall be maintained by the PSALM for over-recovery of the Distribution Utility stranded cost component and made

available to the ERC for purposes of monitoring and accounting for sums collected from the Universal Charge.

- (f) In the event that the total amount collected for the Universal Charge is greater than the actual availments against the Universal Charge, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs.
- (g) In determining the amount which a Distribution Utility can net off from its remittance of the Universal Charge to PSALM, the Distribution Utility shall not discriminate in its own favor at the expense of other beneficiaries in the event that actual collections differ from expected collections based on the level of kilowatt-hour sales used by ERC in setting the Universal Charge per kilowatt-hour (kwh). In such cases, the Distribution Utility shall only retain its proportionate share in the actual collection.

**SEC. 7. *Deferment.*** –

All Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of four (4) years from its imposition: *Provided*, That, such Self-Generation Facilities shall register with the ERC and PSALM.

**SEC. 8. *Fines and Penalties.*** –

- (a) In cases where the TRANSCO or its Buyer or Concessionaire or a Distribution Utility collects funds earmarked for the Universal Charge but fails to remit the same to PSALM on or before the fifteenth (15th) day of the succeeding month, the ERC may impose the appropriate fines and penalties prescribed in Section 46 of the Act including, but not limited to, assessed interest charges.
- (b) In cases where a Self-Generation Facility refuses to pay the Universal Charge, the

ERC may impose the appropriate fines and penalties prescribed in Section 46 of the Act, including but not limited to, assessed interest charges.

**RULE 19. MANDATED RESIDENTIAL REBATE**

- (a) The ERC shall monitor and ensure the implementation of its Resolution No. 2001-04 issued on 26 July 2001 and any amendments thereto. The ERC shall impose fines and penalties on parties who fail to comply with said Resolution.
- (b) The reduction shall be reflected as a separate item in the consumer billing statement.

**RULE 20. LIFELINE RATE**

**SECTION 1. *Guiding Principle.*** –

Pursuant to Section 73 of the Act, a socialized pricing mechanism called a Lifeline Rate for the Marginalized End-users shall be set by the ERC.

**SEC. 2. *Scope of Application.*** –

The provision of Lifeline Rate shall be applied to all Marginalized End-users of all Distribution Utilities pursuant to the Act. It is the responsibility of the ERC to monitor compliance to specific guidelines it shall issue pursuant to the implementation of Lifeline Rate.

**SEC. 3. *Application.*** –

- (a) The Lifeline Rate shall be exempted from the cross subsidy removal under the Act for a period of ten (10) years, unless extended by law.
- (b) Each Distribution Utility shall file a petition with the ERC recommending the level of consumption (kWh per month) to be qualified for the Lifeline Rate.



- (c) The ERC shall determine and approve different levels of consumption and cross-subsidy support for each Distribution Utility or classification of Distribution Utilities.

## **PART IV – PRIVATIZATION OF NATIONAL POWER CORPORATION**

### **RULE 21. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)**

#### *SECTION 1. Creation of PSALM. –*

Pursuant to Section 49 of the Act, a government-owned and –controlled corporation known as the “Power Sector Assets and Liabilities Management Corporation”, hereinafter referred to as the “PSALM Corp.” or “PSALM,” was created to take ownership of all existing NPC generation assets, liabilities,

IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be assumed by the PSALM, within one hundred eighty (180) days from the approval of the Act.

NPC and PSALM shall take such measures and execute such documents to effect the transfer of the ownership and possession of all the assets, rights, privileges, and liabilities required by the Act to be transferred by NPC to PSALM.

#### *SEC. 2. Purpose and Objective. –*

The principal purpose of the PSALM 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 managing and liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

#### *SEC. 3. Domicile. –*

The PSALM shall have its principal office and place of business within Metro Manila.

#### *SEC. 4. Term of Existence. –*

Unless otherwise provided by law, PSALM shall exist for a period of twenty-five (25) years from the effectivity of the Act, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government. Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.

#### *SEC. 5. Powers. –*

PSALM shall, in the performance of its functions and for the attainment of its objectives, have the following powers:

- (a) To formulate and implement a program for the sale and Privatization of the NPC assets and IPP contracts and the management and liquidation of Stranded Debts and Stranded Contract Costs of NPC, such liquidation to be completed within the term of existence of the PSALM;
- (b) To take title to and possession of, administer and conserve the assets transferred to it, including the execution of bilateral contracts to sell power from undisposed assets and contracts transferred by NPC;
- (c) To sell or dispose the transferred assets at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;
- (d) To take title to and possession of, and assume all rights and obligations of NPC

under IPP contracts, and to appoint, after public bidding in a transparent and open manner, qualified independent entities who shall act as IPP Administrators in accordance with the Act;

- (e) To calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC which shall form part of the basis of the ERC in the determination of the Universal Charge;
- (f) To liquidate Stranded Contract Costs of NPC utilizing proceeds from appropriations, sales and other property contributed to it, including the proceeds from the Universal Charge;
- (g) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;
- (h) To sue and be sued in its name;
- (i) To appoint or hire, transfer, remove and fix the compensation of its personnel and such advisors or other Persons as may be necessary in the sale, Privatization and disposition of NPC assets and IPP contracts: *Provided, however,* That PSALM shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;
- (j) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;
- (k) To borrow money and incur such liabilities, as may be required to service all obligations transferred from NPC and loans from ECs assumed from NEA in accordance with the relevant sections of these Rules, including the issuance of bonds, securities or other evidence of indebtedness utilizing its assets as collateral and/or through the guarantees

of the National Government: *Provided,* That all such debts or borrowings shall have been paid off or settled before the end of its corporate life;

- (l) To restructure existing loans of the NPC;
- (m) To collect, administer, and apply NPC's portion of the Universal Charge;
- (n) To issue other forms of financial instruments such as warrants, options, convertibles and to create Special Purpose Vehicles (SPVs) to maximize proceeds and value, as well as efficiently manage its liabilities;
- (o) To structure the sale, Privatization or disposition of NPC assets and IPP Contracts and/or their energy output based on terms and conditions which shall optimize the value and sale prices of said assets;
- (p) To create and administer STFs under Section 34 of the Act and these Rules;
- (q) To operate the generation assets, directly or through NPC, prior to Privatization of such assets. Towards this end, while PSALM operates the generation assets, it shall be considered a Generation Company;
- (r) To mitigate its potential stranded costs by making reasonable best efforts to reduce the cost of existing contracts with IPPs;
- (s) To ensure that SPUG conduct proper monitoring, accounting and control of expenditures, and efficient utilization of the missionary electrification funds from the Universal Charge; and
- (t) To do any act necessary or proper to carry out the purpose for which it was created, including the formation of one or more subsidiaries to maximize Privatization proceeds, enter into compromise agreements, or take such other acts as

may be determined by the PSALM Board to be necessary, useful, incidental or auxiliary to accomplish its purposes and objectives as specified in the Act.

SEC. 6. *PSALM Board of Directors.* –

PSALM shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of the DOF as the Chairman, and the Secretary of the DOE, the Secretary of the DBM, the Director-General of the NEDA, the Secretary of the DOJ, the Secretary of the DTI and the President of the PSALM as ex-officio members thereof.

SEC. 7. *Powers of PSALM Board.* –

All the powers and functions of PSALM shall be vested in and exercised by its Board of Directors.

SEC. 8. *PSALM Board Meetings and Quorum.*  
–

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.

SEC. 9. *Powers of the PSALM President.* –

(a) The President of PSALM shall be appointed by the President of the Philippines. In the absence of the Chairman and the Vice-Chairman, the PSALM President shall preside over Board meetings.

(b) The PSALM President shall be the Chief Executive Officer of PSALM and shall have the following powers and duties:

- (i) To execute and administer the policies and measures approved by

the Board, and take responsibility for the efficient discharge of management functions;

- (ii) To oversee the preparation of the budget of PSALM;

- (iii) To direct and supervise the operation and internal administration of PSALM and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the PSALM;

- (iv) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the PSALM; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of PSALM;

- (v) To submit an annual report to the Board on the activities and achievements of PSALM at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law and under these Rules;

- (vi) To represent PSALM in all dealings and transactions with other offices, agencies and instrumentalities of the National Government and with all Persons and other entities, private or public, domestic or foreign; and

- (vii) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 10. *Exemption from the Salary Standardization Law.* –

The salaries and benefits of employees in the PSALM shall be exempt from Republic Act No. 6758 and shall be fixed by the PSALM Board.

SEC. 11. *Property of PSALM.* –

The following funds, assets, contributions and other properties shall constitute the property of the PSALM:

- (a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:
  - (i) Net profit of NPC;
  - (ii) Earning before interest, taxes, depreciation and amortization of the Pulangui and Agus Complexes;
  - (iii) Net profit of TRANSCO;
  - (iv) Proceeds from the disposition and Privatization of PSALM's generation, other disposable assets, and TRANSCO, net of all transaction costs and fees associated with such disposition and Privatization; and
  - (v) Net profit arising from the administration of IPPs.
- (b) Transfers from the National Government;
- (c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided*, That all borrowings shall be fully paid for or settled by the end of the life of the PSALM;
- (d) Proceeds from the Universal Charge allocated for Stranded Debts and Stranded Contract Costs of NPC;
- (e) Official assistance, grants and donations from external sources;
- (f) Repayment by ECs of such ECs loans assumed by PSALM. Such repayments

must be made within five (5) years from such assumption of loans by PSALM by ECs who have transferred ownership or Control of its assets, franchise or operations pursuant to Section 60 of the Act;

- (g) Proceeds from insurance claims corresponding to assets transferred to PSALM by NPC; and
- (h) Other sources of funds as may be determined by PSALM necessary for the above-mentioned purposes.

SEC. 12. *Claims Against PSALM.* –

The following shall constitute the claims against PSALM:

- (a) NPC liabilities transferred to PSALM;
- (b) Transfers from the National Government;
- (c) New loans, such as, but not limited to those in the form of bonds, convertible instruments, warrants, leases and similar structures;
- (d) Obligations under IPP contracts transferred by NPC to PSALM;
- (e) Loans of ECs that are to be assumed by PSALM under Section 60 of the Act; and
- (f) Expenses for rehabilitation and maintenance of Agus and Pulangi Complexes.

**RULE 22. NATIONAL TRANSMISSION CORPORATION (TRANSCO)**

SECTION 1. *Creation of TRANSCO.* –

Pursuant to Section 8 of the Act, TRANSCO, which shall be wholly owned by PSALM, has been created to assume the transmission facilities of NPC, all other assets related to transmission operations, including nationwide franchise of NPC for the operation of the

transmission system and the Grid, and to assume the electrical transmission functions of the NPC, including among others, the planning, construction and centralized Grid operation and maintenance of high voltage transmission facilities, Grid interconnections, ancillary and other allied facilities.

Pursuant to and in accordance with the requirements of the Act, NPC, PSALM and TRANSCO shall take such measures and execute such documents to effect the transfer of the ownership and possession of the transmission and subtransmission facilities of NPC and all other assets related to transmission operations. Upon such transfer, the nationwide franchise of NPC for the operation of the transmission system and the Grid shall transfer from NPC to TRANSCO.

SEC. 2. *Transmission Ownership and Management.* –

- (a) For the purpose of Section 1 of this Rule, “all other assets” related to transmission and subtransmission facilities shall include, but not be limited, to the following:
  - (i) System operations facilities such as telecommunications and Supervisory Control and Data Acquisition (SCADA) systems including offices and laboratory buildings housing these equipment; and
  - (ii) TRANSCO offices and real estate properties, vehicles, laboratory and test equipment, spare parts and other physical structures.
- (b) The assets of NPC related to the transmission/subtransmission function shall be transferred by NPC directly to TRANSCO on or before 26 December 2001.
- (c) Subtransmission Assets transferred to TRANSCO shall be operated and maintained by TRANSCO or its Buyer or

Concessionaire, until their disposal to Qualified Distribution Utilities.

SEC. 3. *Corporate Powers of the TRANSCO.* –

As a corporate entity, TRANSCO shall have the following corporate powers:

- (a) To have continuous succession under its corporate name until otherwise provided by law;
- (b) To adopt and use a corporate seal and to change, alter or modify the same, if necessary;
- (c) To sue and be sued;
- (d) To enter into contracts, leases and execute any instrument necessary or convenient for the purpose for which it is created;
- (e) To borrow funds from any source, whether private or public, foreign or domestic, and issue bonds and other evidence of indebtedness: *Provided*, That in the case of the bond issues, it shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance: *Provided, further*, That foreign loans shall be obtained in accordance with existing laws, rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
- (f) To pledge, grant a security interest in or otherwise encumber its assets;
- (g) To maintain a provident fund which consists of contributions made by both the TRANSCO and its officials and employees and their earnings for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;
- (h) To create subsidiaries for purposes such as the disposition of Subtransmission Assets to Qualified Distribution Utilities

and the operation thereof prior to disposal;

- (i) To do any act necessary or proper to carry out the purpose for which it is created, or any act which, from time to time, may be declared by the TRANSCO Board as necessary, useful, incidental or auxiliary to accomplish its purposes and objectives;
- (j) Generally, to exercise all the powers of a corporation under the *Corporation Code* insofar as they are not inconsistent with the Act; and
- (k) The TRANSCO may exercise the power of eminent domain on behalf of itself, the Buyer or Concessionaire or any successor-in-interest thereto, subject to the requirements of the Constitution and other laws. Except as provided in the Act, no Person, company or entity other than TRANSCO shall own any transmission facilities.

#### SEC. 4. *TRANSCO Board of Directors.* –

All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the ex-officio Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of the DENR, the President of TRANSCO, and three (3) members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any Person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance,

economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall have any interest, either as investor, officer or director, in any Generation Company or Distribution Utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC.

#### SEC. 5. *Powers and Duties of the Board.* –

The following are the powers of the Board:

- (a) To provide strategic direction for TRANSCO, and formulate medium and long-term strategies pursuant to the vision, mission and objectives of TRANSCO;
- (b) To develop and adopt policies and measures for the efficient and effective management and operation of TRANSCO, including the formation of one or more subsidiaries;
- (c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; and fix their compensation, allowance, and benefits;
- (d) To fix the compensation of the President of TRANSCO and to appoint and fix the compensation of other corporate officers;
- (e) For cause, to suspend or remove any corporate officer appointed by the Board;
- (f) To adopt and set guidelines for the employment of personnel on the basis of merit, technical competence and moral character;
- (g) Any provision of the law to the contrary notwithstanding, to write-off bad debts; and

(h) Other powers not inconsistent with the Act.

SEC. 6. *Board Meetings.* –

The Board shall meet as often as may be necessary upon the call of the Chairman of the Board, or in his absence, the Vice-Chairman, or in the latter's absence, by a majority of the Board members.

SEC. 7. *Board Per Diems and Allowances.* –

The members of the Board shall receive a *per diem* for each regular or special meeting of the Board actually attended by them and, upon approval of the Secretary of the DOF, such other allowances as the Board may prescribe.

SEC. 8. *Quorum.* –

The presence of at least four (4) members of the Board shall constitute a quorum, which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present in a quorum shall be adequate for the approval of any resolution, decision or order, except when the Board shall otherwise agree that a greater vote is required.

SEC. 9. *Powers of the President of TRANSCO.*  
–

(a) So long as TRANSCO remains wholly owned by PSALM, the President of TRANSCO shall be appointed by the President of the Philippines. In the absence of the Chairman and Vice-Chairman, the President of TRANSCO shall preside over Board meetings.

(b) The President of TRANSCO shall be the Chief Executive Officer of TRANSCO and shall have the following powers and duties:

(i) To execute and administer the policies and measures approved by

the Board, and take responsibility for the efficient discharge of management functions;

(ii) To oversee the preparation of the budget of TRANSCO;

(iii) To direct and supervise the operation and internal administration of TRANSCO and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of TRANSCO;

(iv) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of TRANSCO; and for cause, to remove, suspend or otherwise discipline any subordinate employee of TRANSCO;

(v) To submit an annual report to the Board on the activities and achievements of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

(vi) To represent TRANSCO in all dealings and transactions with other offices, agencies, and instrumentalities of the National Government and with all Persons and other entities, private or public, domestic or foreign; and

(vii) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 10. *Exemption from the Salary Standardization Law.* –

The salaries and benefits of employees in the TRANSCO shall be exempt from Republic Act No. 6758 and shall be fixed by the TRANSCO Board.

SEC. 11. *TRANSCO Privatization.* –

- (a) Within six (6) months from the effectivity of the Act, the PSALM shall submit a Privatization plan for endorsement by the Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM to award, in open competitive bidding, the transmission facilities, including grid interconnections and Ancillary Services to a qualified party either through an outright sale, a Concession Contract or any other means not inconsistent with the objectives of the Act. The Buyer or Concessionaire or any other successor-in-interest to TRANSCO shall be responsible for the improvement, expansion, operation or maintenance of the transmission assets and the operation of any related businesses. PSALM and TRANSCO shall secure a nationwide franchise for and in behalf of the Buyer or Concessionaire. The award shall result in maximum present value of proceeds to the National Government. In case a Concession Contract is awarded, the Concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years. Upon the expiration or termination of the Concession Contract, the transmission facilities and assets, including the nationwide franchise for the operation of the transmission system and Grid shall revert to TRANSCO.
- (b) In any case, the Buyer or Concessionaire or any other successor-in-interest to TRANSCO shall comply with the Grid Code and the TDP as approved. The sale agreement/Concession Contract shall include, but not be limited to, the provision for performance and financial guarantees or any other covenants that the National Government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by

the ERC.

- (c) In case of joint venture/consortium with foreign members/participants of the Buyer or Concessionaire or any other successor-in-interest to TRANSCO, a foreign participant shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be in a transmission system of comparable capacity and coverage as the Philippines.

SEC. 12. *Responsibilities of Buyer or Concessionaire.* –

- (a) This Rule shall apply to TRANSCO or its Buyer or Concessionaire or any successor-in-interest thereto.
- (b) The Buyer or Concessionaire or any successor-in-interest thereto, shall:
- (i) Be responsible for the improvement, expansion, operation and/or maintenance of the Grid;
  - (ii) Comply with the Grid Code and the TDP as approved; and
  - (iii) Comply with the key performance targets and standards set by ERC, in terms of physical transmission system and the management of the transmission activity.
- (c) The performance indicators for reliability, security, adequacy, integrity and stability shall include, but not limited to, the following:
- (i) Number of Interruption Events;
  - (ii) Sustained Average Interruption Frequency Index;
  - (iii) Momentary Average Interruption Frequency Index;



- (iv) Sustained Average Interruption Duration Index;
- (v) System Interruption Severity Index;
- (vi) Frequency of tripping per 100 ckt-km;
- (vii) Average Forced Outage Duration;
- (viii) Accumulated Time Error;
- (ix) Frequency Limit Violation; and
- (x) Voltage Limit Violations.

SEC. 13. *Privatization of Subtransmission.* –

- (a) The subtransmission functions and assets of TRANSCO shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the Subtransmission Assets shall be operated and maintained by TRANSCO or its Buyer or Concessionaire until their disposal to Qualified Distribution Utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM.
- (b) TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the Qualified Distribution Utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of the Act or the start of Open Access, whichever comes earlier: *Provided*, That in the case of ECs, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however*, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the ECs out of the net income derived from such

facilities. The TRANSCO shall determine the disposal value of the Subtransmission Assets based on the revenue potential of such assets. In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

- (c) The take over by a Distribution Utility of any Subtransmission Asset shall not cause a diminution of service and quality to the End-users. Where there are two (2) or more connected Distribution Utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the Subtransmission Assets by the ERC.

The subscription rights of each Distribution Utility involved shall be proportionate to its load requirements unless otherwise agreed by such Distribution Utilities.

Aside from the PSALM, TRANSCO and connected Distribution Utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

**RULE 23. PRIVATIZATION OF THE ASSETS OF NPC**

SECTION 1. *Guiding Principle.* –

Consistent with Section 47 of the Act, the PSALM shall privatize the assets transferred to it from NPC in accordance with these Rules. Within one hundred eighty (180) days from the effectivity of the Act, PSALM shall submit a Privatization plan for the endorsement by the Power Commission and the approval of the President of the Philippines. This plan shall cover the total Privatization of the transmission and generation assets, real estate, and other disposable assets as well as the existing IPP contracts of NPC, except for assets of SPUG. Upon approval of the Privatization plan, PSALM shall implement

the same.

The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged.

*SEC. 2. Scope of Privatization. –*

(a) NPC Generation, Generation-Related, and Other Assets.

Except for the assets of SPUG, NPC assets to be privatized shall include:

- (i) all generation assets and all generation-related machineries and equipment;
- (ii) all real estate and the improvements made thereto; and
- (iii) disposable assets such as facilities, properties, equipment and other assets not essential to the operation of NPC.

To provide for an orderly disposition of these assets, NPC shall provide PSALM an inventory of all these assets within one hundred and twenty (120) days from the effectivity of the Act.

(b) NPC Transmission, Subtransmission, Interconnection and Ancillary Assets.

The transmission, subtransmission, interconnection and ancillary assets of NPC, as defined in Section 8 of the Act and further detailed in Rule 6 on Transmission Sector and Rule 22 on TRANSCO, shall be transferred by NPC directly to TRANSCO. For this purpose, NPC shall submit a list of these assets to PSALM and TRANSCO within one hundred and twenty (120) days from the effectivity of the Act.

(c) IPP Contracts of NPC.

Consistent with Section 8 of this Rule, IPP Contracts of NPC shall refer to generation

capacities developed pursuant to Republic Act No. 6957 (*BOT Law*), as amended by Republic Act No. 7718, 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.

*SEC. 3. Privatization Objectives. –*

The Privatization of the NPC assets intends to achieve the following objectives:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of Restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;

- (h) To promote the utilization of indigenous and new and Renewable Energy Resources in power generation in order to reduce dependence on imported energy; and
- (i) To ensure consumer protection and enhance the competitive operation of the electricity market.

SEC. 4. *Privatization Guidelines.* –

- (a) The Privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized.
- (b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged. Equity or similar instruments of participation by End-users or consumers must be explored exhaustively.

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC generation assets and IPP contracts shall be inwardly remitted and registered with the BSP.

- (c) The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting Generation Companies, ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of the Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:
  - (i) A sufficient scale of operation and balance sheet strength to promote the financial viability of the

restructured units;

- (ii) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;
- (iii) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or of the load curve; and
- (iv) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.
- (d) All assets of NPC shall be sold in an open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;
- (e) In cases of transfer of possession, Control, operation or Privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the National Government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest. The rights of NPC over such multi-purpose hydro facilities shall be transferred to PSALM;
- (f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the Generation Companies that will be initially privatized. Their ownership shall be transferred to the PSALM and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of the Act, and, except for Agus III, shall not be subject to BOT, Build-Rehabilitate-Operate-Transfer (BROT) and other variations thereof pursuant to Republic Act No. 6957 (*BOT Law*), as amended by Republic Act No.

7718. The Privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM in consultation with Congress. PSALM, out of the earnings in the operation of Agus and Pulangui complexes, shall ensure the availability of adequate funds intended for the upkeep of facilities to include funds for repairs, maintenance and expansion of existing facilities;

- (g) The steamfield assets and generation plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but not limited to, Tiwi-Makban, Leyte A and B, Tongonan, Palinpinon, and Mt. Apo.
- (h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to PSALM and operated by NPC on behalf of PSALM for a period of ten (10) years.
- (i) Not later than three (3) years from the effectivity of the Act, and in no case later than the initial implementation of Open Access, at least seventy percent (70%) of the total capacity of generation assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of the Act;
- (j) Except as otherwise provided in these Rules, all appropriate existing authorizations, licenses and permits issued by the National Government, including its departments, bureaus and agencies, and LGUs to NPC shall automatically transfer to PSALM;

- (k) NPC may generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM and shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers; and
- (l) The sale, transfer or disposition of NPC assets shall not affect existing NPC contractual obligations.

#### SEC. 5. *Elements of the Privatization Plan.* –

The Privatization plan for NPC assets shall contain, among others, the following principal elements:

- (a) Structure, sequence, timing and terms of asset disposition;
- (b) Employee issues;
- (c) Management of debt obligations;
- (d) Management of IPP obligations, including appointment of IPP Administrators in accordance with Section 51 (c) of the Act;
- (e) Options for the sale of other assets; and
- (f) Overall timetable and progress milestones.

#### SEC. 6. *Privatization of Hydroelectric Generation Plants.* –

- (a) Consistent with Section 47 (e) of the Act and Section 4 (f) of this Rule, the Privatization of hydro facilities of NPC shall cover the power component including assignable long-term water rights agreements for the use of water, which shall be passed onto and respected by the buyers of the hydroelectric power plants.
- (b) The National Water Resources Board (NWRB) shall ensure that the allocation

for irrigation, as indicated by the NIA and requirements for domestic water supply as provided for by the appropriate Local Water District(s) are recognized and provided for in the water rights agreements. NPC or PSALM may also impose additional conditions in the shareholding agreement with the winning bidders to ensure national security, including, but not limited to, the use of water during drought or calamity.

- (c) Consistent with Section 34 (d) of the Act, the NPC shall continue to be responsible for watershed rehabilitation and management and shall be entitled to the environmental charge equivalent to one-fourth of one centavo per kilowatt-hour sales (P 0.0025/kWh), which shall form part of the Universal Charge. This environmental fund shall be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements. NPC shall submit an annual report to the DOE detailing the progress of the watershed rehabilitation program.
- (d) The NPC and PSALM or NIA, as the case may be, shall continue to be responsible for the dam structure and all other appurtenant structures necessary for the safe and reliable operation of the hydropower plants. The NPC and PSALM or NIA, as the case may be, shall enter into an operations and maintenance agreement with the private operator of the power plant to cover the dam structure and all other appurtenant facilities.

*SEC. 7. Undisposed Generation Assets and IPP Contracts of NPC. –*

- (a) NPC may generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM; and

- (b) NPC shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers.

*SEC. 8. Privatization of IPP Contracts Assumed by PSALM. –*

- (a) The IPP contracts assumed by PSALM shall be privatized taking into consideration buy out provisions, Government performance undertakings and possible bilateral renegotiations to minimize the liabilities of NPC and the National Government.
- (b) Consistent with Section 75 of the Act, with respect to IPP-related contracts, nothing in these Rules shall be construed as:
  - (i) an implied waiver of any right, action or claim, against any Person or entity, of NPC or the National Government arising from or relating to any such contracts; or
  - (ii) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the National Government under existing contracts.
- (c) PSALM shall ensure that the Privatization of IPP contracts assumed by it shall not cause an increase in the stranded costs to be absorbed by the National Government and End-users.

*SEC. 9. Management and Operation of Agus and Pulangui Complexes. –*

The Agus and Pulangui complexes shall be managed and operated by NPC for PSALM as a separate business unit, and shall have its own organization and book of accounts.

## **PART V – OTHER PROVISIONS**

### **RULE 24. ELECTRIC POWER CRISIS PROVISION**

Upon the determination by the President of the Philippines of an imminent shortage of the Supply of Electricity, Congress may authorize, through a joint resolution, the establishment of additional generation capacity under such terms and conditions as it may approve.

### **RULE 25. REVIEW OF IPP CONTRACTS**

An inter-agency committee chaired by the Secretary of DOF, with the Secretary of the DOJ and the Director General of the NEDA as members thereof is hereby created upon the effectivity of the Act. The Committee shall immediately undertake a thorough review of all IPP Contracts. In cases where such contracts are found to have provisions which are grossly disadvantageous, or onerous to the Government, the Committee shall, cause the appropriate government agency to file an action under the arbitration clauses provided in said contracts or initiate any appropriate action under Philippine laws. The PSALM shall diligently seek to reduce stranded costs, if any.

### **RULE 26. RENEGOTIATION OF POWER PURCHASE AND ENERGY CONVERSION AGREEMENTS BETWEEN NPC AND PNOC-EDC**

- (a) Pursuant to Section 69 of the Act, all power purchase and energy conversion agreements between the PNOC-EDC and NPC, including, but not limited to, the Palinpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC within three (3) months from the effectivity of the Act.
- (b) The ERC shall amend the terms of the agreements to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs.

- (c) The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all End-users.
- (d) All amended contracts shall be submitted to the Power Commission for approval.

### **RULE 27. ROYALTIES, RETURNS [RENTALS] AND TAX RATES FOR INDIGENOUS ENERGY RESOURCES**

The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns [rentals] and taxes collected for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

To this end, the DOF shall recommend to the President of the Philippines the issuance of an Executive Order within thirty (30) calendar days from the effectivity of these Rules.

To ensure lower rates for End-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

### **RULE 28. ENVIRONMENTAL PROTECTION**

Pursuant to Section 65 of the Act, Electric Power Industry Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the DENR including, in appropriate cases, the establishment of an environmental guarantee fund.

### **RULE 29. BENEFITS TO HOST COMMUNITIES**

Pursuant to Section 66 of the Act, the obligations of Generation Companies and energy resource developers to communities hosting the Generation Facilities and/or energy resource development projects as

defined under Chapter II, Section 289 to 294 of the Republic Act No. 7160 (*Local Government Code*) and Section 5 (i) of Republic Act No. 7638 (*DOE Law*) and their implementing rules and regulations shall continue: *Provided*, That the obligations mandated under Chapter II, Section 291 of the *Local Government Code*, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

**A. RULES FOR THE BENEFITS TO HOST COMMUNITIES PURSUANT TO SECTION 5 (i) OF REPUBLIC ACT 7638**

SECTION 1. *Scope of Application.* –

This Rule shall apply to Generation Facilities and/or energy resource development projects located in all barangays, municipalities, cities, provinces and regions.

SEC. 2. *Obligation to Provide Financial Benefits.* –

The Generation Facilities and/or energy resource development facilities, such as but not limited to the following, are required to provide the financial benefits under Energy Regulations No. 1-94 (E.R. 1-94) of the DOE:

- (a) Spin-off Facilities of NPC or their transferees, including Generation Facilities owned by NPC transferred to PSALM and subsequently privatized pursuant to the Act;
- (b) Agus and Pulangui Complexes;
- (c) Facilities owned and operated by NPC-SPUG;
- (d) Facilities under BOT arrangement and other variants with NPC (NPC IPPs), NPC-SPUG, NIA, PNOC-EDC and other government agencies;
- (e) Facilities under BOT arrangement and other variant with Distribution Utilities (IPPs of Distribution Utilities);

- (f) Facilities owned or operated by a Distribution Utility;
- (g) Self-Generation Facilities;
- (h) Facilities operating in EZs; and
- (i) Integrated energy resource development and Generation Facilities such as hydro, geothermal and coal.

SEC. 3. *Beneficiaries.* –

Direct benefits shall be provided to the host LGU, especially the community and people affected while equitable preferential benefits shall be provided to the host region. Host LGU or host region shall be understood as follows:

- (a) With respect to Generation Facilities, in the case of power barges, the host LGU or region is that where the power barge is moored; in all other cases, the host LGU or region is that where the Generation Facility is physically located. Generation Facilities shall not include transmission lines and substations.
- (b) With respect to energy resources:
  - (i) Coal. The host LGU or region is that where the producing positive coal reserve is located, as delineated by detailed geophysical, geological and exploration surveys.
  - (ii) Geothermal. The host LGU or region is that where the producing geothermal reservoir is located as delineated by geochemical, geophysical, and exploration surveys. "Producing geothermal reservoir" refers to the subsurface geological environment where the geothermal fluids accumulate and circulate, inclusive of the production and re-injection/recharge zone.
  - (iii) Hydro. The host LGU or region is that where the hydro reservoir is

located as delineated by detailed topographic, geological and geotechnical investigations, reservoir and dam height optimization studies, and as delineated by detailed ground surveys. "Hydro reservoir" refers to either a natural lake or an artificial lake created by the impounding of stream flow, runoff and subsurface water including but not limited to intakes, diversion weirs and transbasin underground tunnel which supplies water to a dam. It also refers to where river or rivers supply/ies water to a dam reservoir through a transbasin underground tunnel to generate power.

- (iv) Petroleum/Natural Gas. The host LGU or region is that where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical exploration surveys.

SEC. 4. *Nature of Benefits Provided under E.R. 1-94.* –

- (a) The Generation Company and/or energy resource developer shall set aside one centavo per kilowatt-hour (P 0.01/kWh) of the total electricity sales as financial benefit of the host communities of such Generation Facility, where applicable.

- (i) For a Generation Facility and/or energy resource located in a non-highly urbanized city, the P 0.01/kWh financial benefit shall be allocated as follows:

- (1) Fifty percent of one centavo per kilowatt-hour (P 0.005/kWh) of the total electricity sales shall be set aside as an electrification fund (EF) to be applied in the following radiating order:

- (a) Designated resettlement area/s;

- (b) Host barangay/s;
- (c) Host municipality/ies or city/ies;
- (d) Host province/s;
- (e) Host region/s; and
- (f) Other areas as may be prioritized/determined by the DOE.

- (2) Twenty five percent of one centavo per kilowatt-hour (P 0.0025/kWh) of the total electricity sales as a development and livelihood fund (DLF) to be applied in the following manner:

- (a) Designated resettlement area/s – 5%
- (b) Host barangay/s – 20%
- (c) Host municipality/ies or city/ies – 35%
- (d) Host province/s – 30%
- (e) Host region/s – 10%

In the absence of a designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

- (3) Twenty five percent of one centavo per kilowatt-hour (P 0.0025/kWh) of the total electricity sales as a reforestation, watershed management, health and/or environment enhancement fund (RWMHEEF) to be allocated in the following manner:

- (a) Designated resettlement area/s – 5%



- (b) Host barangay/s – 20%
- (c) Host municipality/ies or city/ies – 35%
- (d) Host province/s – 30%
- (e) Host region/s – 10%

In the absence of a designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(ii) For a Generation Facility and/or energy resource located within a highly urbanized city, the P 0.01/kWh financial benefit shall be allocated as follows:

(1) Seventy five percent of one centavo per kilowatt-hour (P 0.0075/kWh) of the total electricity sales of all Generation Facilities located in a highly urbanized city shall be set aside into one account as an EF to be applied in the following priority:

- (a) Designated resettlement area/s;
- (b) Host barangay/s;
- (c) Host city/ies;
- (d) Province/s nearest to the host city/ies;
- (e) Region/s of the host city/ies;
- (f) Host communities of other facilities with insufficient electrification fund;
- (g) Areas traversed by transmission lines and substations or similar facilities; and

(h) Other areas as may be prioritized/determined by the DOE.

(2) Twelve and one-half percent of one centavo per kilowatt-hour (P 0.00125) as a DLF to be allocated in the following manner:

- (a) Designated resettlement area/s – 10%
- (b) Host barangay/s – 30%
- (c) Host city/ies – 60%

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(3) Twelve and one-half percent of one centavo per kilowatt-hour (P 0.00125) as a RWMHEEF to be allocated in the following manner:

- (a) Designated resettlement area/s – 10%
- (b) Host barangay/s – 30%
- (c) Host city/ies – 60%

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(iii) In case of integrated hydroelectric generation projects with cascading Generation Facilities, where the Generation Facilities and energy resource are located in different municipalities/cities or provinces, irrespective of its location, whether located in a highly urbanized city or non-highly urbanized city, allocation

of financial benefits shall follow Section 4 (a) (i), hereof. The host communities of the Generation Facilities and energy resource development projects shall equally divide said financial benefits. The host municipality/city of the Generation Facility adjacent to the energy resource shall in no case be a host to both said Generation Facility and energy resource.

(b) All interest earnings from EF, DLF, RWMHEEF shall be set aside into one trust account to be utilized for the electrification projects of the communities in the following order of priority:

- (i) Direct host barangay/s, and host municipality/ies or city/ies with insufficient accrued EF;
- (ii) Areas traversed by transmission lines, and sub-stations or similar facilities;
- (iii) Areas not directly connected to the Grid or national transmission system which include isolated or remote communities; and
- (iv) Other areas as may be prioritized/determined by the DOE.

(c) The financial assistance advanced by the Generation Company and energy resource developer during its pre-operation stage or before the start of the commercial operations for the purpose of securing favorable endorsement from the community and people affected, after Republic Act 7638 (*DOE Law*) has become effective or pursuant to this Rule, shall be credited by the Generation Company, energy resource developer or their successors-in-interest against the accrued financial benefits based on the following criteria:

- (i) The projects to be funded under the advance financial assistance should be approved by the DOE consistent with E.R. 1-94.
- (ii) The total financial assistance to be amortized at a rate of twenty percent (20%) from the accrued financial benefits shall be based on the actual amount spent for the project/s validated by the DOE.
- (iii) Amortization of financial assistance shall commence from the next quarter billing, after the DOE has issued a validated report on the actual amount spent for the project/s.

#### SEC. 5. *Establishment of Trust Accounts.* –

The DOE shall establish trust accounts specific for EF, DLF, RWMHEEF in the name of the DOE and the Generation Facilities or Generation Company and/or energy resource developer. For purposes of said establishment, the Generation Company and/or energy resource developer shall submit a report that contains the following data:

- (a) Actual generation, station/own service use, system loss, and electricity sales in kilowatt-hour;
- (b) Accrued benefits due to the host LGU and host region derived from Section 5 (a) hereof;
- (c) Details of benefits and/or financial assistance advanced to the host LGU and host region, if any; and
- (d) Such other information, which the DOE may deem necessary for review and audit purposes.

#### SEC. 6. *Project Implementation and Approval.*

–

The evaluation and approval of project proposals/work programs endorsed by the host LGU and host region through the Generation Company and/or energy resource developer shall strictly be guided by the following procedures:

- (a) The Generation Company and/or energy resource developer, through its designated Community Relations Officer (COMREL) shall assist the host LGU and host region in the preparation of annual work programs/project proposals qualified by the DOE to be implemented in any given year. The amount of financial benefits accruing to the pertinent funds in the immediate preceding year shall be used as basis in the preparation of annual work programs/project proposals. The said annual work programs/project proposals shall be submitted by the Generation Company and/or energy resource developer to the DOE not later than March 15 of every year.
- (b) All work programs/project proposals for DLF and RWMHEEF shall be implemented within one (1) year upon receipt of funds. Said work programs/project proposals shall be implemented, supervised and administered by the concerned LGU.
- (c) The Generation Company and/or energy resource developer shall review the work programs/project proposals on development, livelihood, reforestation, watershed management, health and/or environment enhancement duly endorsed by the host LGU and host region through a resolution passed by its Sanggunian or Regional Development Council. In the case of official resettlement area, work programs/project proposals may be endorsed by the resettlement organization, association or cooperative duly certified by the Generation Company and/or energy resource developer and registered under the concerned government agencies. The Generation Company and/or energy resource

developer shall make the appropriate endorsement of annual work programs/project proposals to the DOE for further review and approval. The review and approval of annual work programs/project proposals shall be completed by DOE within twenty (20) working days upon receipt of complete documentation. Thereafter, project implementation shall proceed as prescribed under Sub-section (f) (i), hereof.

- (d) For reforestation and watershed management projects, work programs/project proposals should be coordinated and endorsed by the DENR Regional Office or the watershed management administrator in the area.
- (e) For electrification programs, the Generation Company and/or energy resource developer shall coordinate with the concerned Distribution Utility in the development of said program for the barangays energization and prioritization in any given year. The annual electrification programs shall be directly forwarded to DOE for review and evaluation. The NEA shall assist the ECs in the preparation of documents such as but not limited to the staking sheets or single line diagrams and cost estimates. Thereafter, project implementation shall proceed as prescribed under Sub-section (f) (ii), hereof. The electrification projects may be undertaken by the Distribution Utility or the Generation Company and/or energy resource developer or their accredited contractors, herein referred to as project implementor.
- (f) Upon submission of complete documents of the work programs/project proposals, project implementation shall proceed in any of the following manner:
  - (i) For development, livelihood, reforestation, watershed management, health and/or environment enhancement projects,

a Memorandum of Agreement (MOA) shall be entered into by and among the DOE, Generation Company and/or energy resource developer, and the concerned LGU to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the project funds directly to the concerned host LGU or host region within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

- (ii) For electrification projects, a MOA shall be entered into by and among the DOE, the concerned Distribution Utility/project implementor, Generation Company and/or energy resource developer to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the funds to the franchised Distribution Utility/project implementor within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

For projects to be undertaken by contract, initial release of fund shall be equivalent to fifteen percent (15%) of the total approved project cost. Subsequent release of fund balance shall be based on the result of qualified lowest bid cost. For projects to be undertaken by administration, total approved project cost shall be released upon signing of the MOA.

- (g) All funds disbursements shall follow government accounting and auditing rules and regulations.

#### SEC. 7. *Administration of Trust Accounts.* –

- (a) The administration of EF, DLF, RWMHEEF shall be undertaken by the DOE. All funds administered by NPC with regard to DLF and RWMHEEF shall be transferred to DOE for administration within one hundred twenty (120) days from the effectivity of these Rules.

Thereafter, all MOA entered into by DOE and NPC on the establishment of trust accounts shall be amended to reflect transfer of responsibilities to NPC-successors, transferees and/or assignees or IPPs.

- (b) The obligation of the Generation Companies to DOE with regard to the remittance of funds shall be settled in the following manner:
  - (i) For NPC-IPPs, if applicable, to settle all obligations before issuance of COC/registration certificate by ERC.
  - (ii) For NPC, if applicable, to settle all obligations before Privatization/sale and transfer of IPP contracts to PSALM.
  - (iii) For IPPs of Distribution Utilities with an outstanding financial obligation with the DOE pursuant to Department Circular No. 2000-03-03 shall settle its account within one (1) year upon effectivity of these Rules.
  - (iv) After thorough investigation, non-remittance of the Generation Company and/or energy resource developer of the financial benefits due to the host communities shall be a ground for DOE's recommendation to ERC for appropriate action and reasonable measures in accordance with ERC rules and regulations.

#### SEC. 8. *Audit of Financial Benefits and Project Monitoring.* –

- (a) The DOE shall review and audit the source of fund, particularly on the total electricity sales of the Generation Facility to determine the financial benefits due to the host LGUs and host regions.
- (b) The DOE shall conduct financial and technical audit to monitor compliance by the LGU and region with regard to the implementation of the projects. In the event of unjustified disbursement of fund and non-completion or delay in the implementation of projects by the LGU or region concerned and the Distribution Utility/project implementor, the DOE shall defer the releases of funds and take appropriate reasonable measures in accordance with any existing and future government rules and regulations until such time that the LGU or region and franchised Distribution Utility/project implementor would be able to justify disbursement of funds to the satisfaction of the DOE or deputized/resident auditor of the Commission on Audit (COA).

SEC. 9. *Other Provisions.* –

- (a) The application of this Rule 27 (A) shall take effect upon effectivity of these Rules.
- (b) Any provision in E.R. 1-94, its amendments and other related issuances and their amendments that are inconsistent with these Rules are hereby superseded, modified or amended accordingly.

**B. RULES FOR THE BENEFITS TO HOST COMMUNITIES PURSUANT TO CHAPTER II, SECTIONS 289 TO 294 OF THE LOCAL GOVERNMENT CODE**

SECTION 1. *Scope of Application.* –

The LGUs hosting the national wealth shall have an equitable share in the proceeds derived from the utilization and development of national wealth, including sharing the same with the inhabitants by way of direct benefits.

SEC. 2. *Amount of Share of Local Government Units.* –

Any government agency or government-owned or controlled corporation and private corporation or entities engaged in the utilization and development of the national wealth are required to provide share to the host LGUs, based on the preceding fiscal year of the proceeds, based on the following formula, whichever will produce a share higher for the LGU:

- (a) One percent (1%) of the gross sales or receipts of the preceding calendar year; or
- (b) Forty percent (40%) of the national wealth taxes, royalties, fees or charges derived by the government agency or government owned and controlled corporation and privately-owned corporation or entities.

SEC. 3. *Nature of Benefits.* –

- (a) Eighty percent (80%) of the proceeds shall be applied solely to lower the cost of electricity either through subsidy or non-subsidy scheme or combination of both.
  - (i) Non-subsidy scheme may take the form but not limited to electrification, technical upgrading and rehabilitation of distribution lines to reduce electricity losses, use of energy saving devices, and support of the infrastructure facilities servicing the needs of the public which can all redound to the reduction of the electricity rate of the area.
  - (ii) Subsidy scheme will be directly utilized to subsidize cost of power used by the consumers. This may be applied with or without ceiling or at graduated rates (per kWh per level of consumption) in the following

form which the host LGU may choose from.

(1) Subsidy per customer, an equal or predetermined level or rate of subsidy per qualified customer:

- (a) All consumer types;
- (b) Residential consumer only; and
- (c) Other preferred types of consumer combinations, such as: commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.

(2) Subsidy of power consumption, which amount of subsidy depends on the magnitude of power consumption of qualified consumers:

- (a) All consumer types;
- (b) Residential consumer only; and
- (c) Other preferred types of consumer combinations, such as, commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.

(b) Twenty percent (20%) of the proceeds shall be utilized for the development and livelihood projects which shall be appropriated by their respective Sanggunian.

#### SEC. 4. *Allocation of Shares.* –

The amount of share of the LGUs shall be distributed in the following manner:

(a) For energy resource located in the province, share shall be appropriated as

follows:

- (i) Host barangay – 35%
- (ii) Host component city/municipality – 45%
- (iii) Host province – 20%

(b) For energy resource located in a highly urbanized or independent component city, share shall be appropriated as follows:

- (i) Host barangay – 35%
- (ii) Host city – 65%

(c) For energy resource located in two (2) or more provinces, or in two (2) or more municipalities/cities or two (2) or more barangays, their respective shares shall be appropriated on the basis of the following:

- (i) population – seventy percent (70%); and
- (ii) land area – thirty percent (30%)

Where the land area is the area of the host barangays found within the technically delineated energy resource area and where the population refers to the population of host barangays found wholly or partially within the technically delineated energy resource.

#### SEC. 5. *Monitoring.* –

(a) The Department of Interior and Local Government (DILG) shall monitor the compliance of host LGUs. To assist in the monitoring of compliance, all host LGUs of energy projects are required to submit the following:

- (i) The scheme of electricity rate reduction adopted by the host LGU (with proper documentation) based

on the prescription in the DILG-DOE Joint Circular 95-01 dated 31 October 1995 at the start of the use of fund or upon the amendment of scheme by the respective LGU councils; and

- (ii) Summary of transactions thirty (30) days after end of each quarter.

The DILG shall furnish the DOE the above information within fifteen (15) days from the date of the reporting period.

- (b) The COA shall conduct yearly audit of the national wealth proceeds consistent with its responsibility to examine all accounts pertaining to uses of funds and property owned or held in trust by the government or any of its agencies as mandated under Section 2 of Presidential Decree No. 1445 of 1976.
- (c) In the event of violation or non-compliance with the provisions of the DILG-DOE Joint Circulars 95-01 and 98-01, and other relevant issuances, the DILG may, upon prior notice and hearing, order the project proponent the non-remittance of the royalty payment to the host LGU concerned pending completion of the investigation of the concerned LGU if the project proponent is a GOCC; or notify the DBM regarding such violation and order the non-release of the LGU shares if the project proponent is a private company. The unremitted funds shall be deposited in a government bank under escrow.

### **RULE 30. NPC OFFER OF TRANSITION SUPPLY CONTRACTS**

#### **SECTION 1. *Guiding Principle.* –**

Pursuant to Section 67 of the Act, NPC shall, within six (6) months from the effectivity of the Act, file with the ERC for its approval the transition supply contracts (TSCs) duly negotiated with the Distribution Utilities.

#### **SEC. 2. *Scope of Application.* –**

This Rule shall apply to all Distribution Utilities.

#### **SEC. 3. *Terms and Conditions of the TSCs.* –**

- (a) The TSCs shall contain the terms and conditions of supply and a corresponding schedule of rates, consistent with the provision of the Act, including adjustments and/or indexation formulas which shall apply during the term of such contracts.
- (b) The term of the TSCs shall not extend beyond one (1) year from the introduction of Open Access.
- (c) Such contracts shall be based on the projected demand of the Distribution Utilities less any of their currently committed quantities under eligible contracts, if any, as defined in Section 33 of the Act.
- (d) The total generation capacity of such signed TSCs shall not exceed the level of NPC owned, controlled, or committed capacity as of the effectivity of the Act.
- (e) The TSCs shall be assignable to the NPC successor Generation Companies.
- (f) Notwithstanding the provisions of Section 25 of the Act, the rates charged by a Distribution Utility for the generation component of the Supply of Electricity in the Retail Rate shall, for the term of the TSCs, not exceed the TSC rates, as updated monthly.
- (g) The recovery of costs incurred by a Distribution Utility for any generation component in excess of the TSC rates shall be disallowed by the ERC except for eligible contracts and mandated purchases from the WESM.

(h) The limitation on the recovery of generation component costs by a Distribution Utility shall apply only to the equivalent quality and quantity of electricity still available to the Distribution Utility from NPC.

**SEC. 4. TSCs Approval and Monitoring. –**

- (a) Within six (6) months from the date of submission of the TSC by the NPC, the ERC shall notify NPC of their approval of the rates contained therein.
- (b) The ERC shall maintain a record of the contract terms and rates offered by NPC.
- (c) The ERC shall update monthly the rates using the appropriate adjustment and/or indexation formula.

**SEC. 5. Recovery of Generation Component by Distribution Utility. –**

Notwithstanding the provisions of Section 25 of the Act, the rates charged by a Distribution Utility for the generation component of the Supply of Electricity in its Retail Rates shall, for the term of the TSC, not exceed the generation component of the TSC rates, as updated monthly.

- (a) Recovery of cost incurred by a Distribution Utility for any generation component in excess of the TSC rates shall not be allowed, except for eligible contracts approved by the ERC for the recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities as provided in Section 33 of the Act and mandated purchases from the WESM.
- (b) The limitation on the recovery of generation component costs by a Distribution Utility shall apply only to the equivalent quality and quantity of electricity still available to the Distribution Utility from NPC. For purposes of the determination of equivalent quality and quantity of electricity, the ERC shall

consider, among others, firm and non-firm capacities, standards specified in the Grid and Distribution Codes, and other similar criteria as may be determined by the ERC.

**RULE 31. DEBTS OF ELECTRIC COOPERATIVES (ECs)**

**SECTION 1. Guiding Principle. –**

Pursuant to Section 60 of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines.

**SEC. 2. Scope. –**

This Rule shall cover all outstanding financial obligations by the ECs to NEA and other government agencies, incurred as of 26 June 2001 for the purpose of financing the Rural Electrification Program.

Financial obligation shall refer to the indebtedness, whether through regular or restructured loans, liabilities, or amounts payable by the ECs to NEA and other government agencies as of 26 June 2001, to finance their rural electrification projects, subject to the terms and conditions of duly-executed loan and mortgage contracts between NEA and/or other government agencies, as creditors and the ECs, as debtors/borrowers.

**SEC. 3. Condonation of Debts of ECs. –**

From the effectivity of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of the Act which shall be implemented and completed within three



(3) years from the effectivity of the Act.

These debts shall include all outstanding financial obligations incurred by the ECs for the purpose of financing the Rural Electrification Program, exclusively utilized for capital expenditures for the acquisition or construction, operation and maintenance, and/or expansion and rehabilitation of distribution, generation and Subtransmission Assets/facilities and pre-operating expenses for newly-established ECs: *Provided, however*, That such outstanding financial obligations shall include interest, surcharges and penalties on ECs' Rural Electrification Loans, released from NEA and other government agencies to ECs as of 26 June 2001; duly booked by NEA, validated by COA, and confirmed by the ECs.

SEC. 4. *Assumption of EC Loans by PSALM.* –

PSALM shall assume all outstanding financial obligations of the ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program; such outstanding financial obligations of the ECs involving "Rural Electrification Loans" shall be determined in accordance with the program approved by the President of the Philippines. Correspondingly, having assumed the ECs' obligations, the PSALM shall repay NEA and the other government agencies, in accordance with a prescribed amortization schedule agreed between the parties.

The outstanding financial obligations from other government agencies referred to in Section 60 of the Act shall include loans contracted from the following:

- (a) Development Bank of the Philippines (DBP);
- (b) Land Bank of the Philippines (LBP);
- (c) Asset Privatization Trust (APT) now Privatization and Management Office (PMO);
- (d) NPC, for loans on taken-over systems, excluding power bills;

(e) DOE; and

(f) LGUs.

*Provided, however*, That such loans were contracted in accordance with NEA policies and with prior NEA authorization, except for loans transferred to APT, now PMO.

SEC. 5. *Transfer of Ownership or Control of Assets, Franchise or Operation.* –

Within five (5) years from the completed Condonation of debt, any EC which shall transfer ownership or Control of its assets, franchise or operations shall repay PSALM the total debts, including accrued interest thereon: *Provided, however*, That the ECs may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement and management system for needed rehabilitation and modernization programs: *Provided, further*, That it does not involve permanent transfer or Control of the assets, franchise and operations: *Provided, finally*, That DOF and NEA shall jointly issue the necessary guidelines to protect the member-consumers of the ECs involved.

SEC. 6. *Reduction in ECs' Rates.* –

The ERC shall ensure a reduction in the rates of ECs commensurate with the resulting savings due to the removal of the amortization payments of their loans and for this purpose, NEA shall assist the ECs in their rate formulation consistent with the program approved by the President of the Philippines.

Nothing in this Rule however, shall mean that ECs are not obliged to pay the NEA with respect to all outstanding financial obligations assumed by PSALM, if the amortization cost component of the EC's tariff is still collected from the consumers.

SEC. 7. *Reporting, Accounting and Audit Procedures.* –

NEA shall have the responsibility for the accounting of all outstanding financial

obligations of ECs from NEA that will be assumed by PSALM. Thereafter, NEA shall render reports and submit the same to PSALM.

PSALM shall have the right to conduct final audit of all the outstanding financial obligations of ECs in accordance with existing accounting and auditing rules and regulations, before the same can be considered for final assumption. Likewise, PSALM shall submit annual progress reports to the DOF on the status of ECs' loans that were assumed and subsequently condoned.

### **RULE 32. FISCAL PRUDENCE**

- (a) Pursuant to Section 64 of the Act, the creation of new positions and the levels of or increases in salaries and all other emoluments and benefits of TRANSCO and PSALM personnel shall be subject to the approval of the President of the Philippines.
- (b) Likewise, the compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM shall be subject to the approval of the President of the Philippines.

### **RULE 33. SEPARATION BENEFITS**

#### **SECTION 1. *General Statement on Coverage.*** –

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: *Provided, however,* That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

#### **SEC. 2. *Scope of Application.*** –

This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

#### **SEC. 3. *Separation and Other Benefits.*** –

- (a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-½) months' salary for every year of service in the government, whichever is higher: *Provided,* That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.
- (b) The following shall govern the application of Section 3 (a) of this Rule:
  - (i) With respect to NPC officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3 (a) herein when the restructuring plan as approved by the NPC Board shall have been implemented.
  - (ii) With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3 (a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5 (a) (5) of Presidential Decree No. 269.
  - (iii) With respect to the affected Bureaus of the DOE, their officials and employees shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3 (a) herein when the re-organizational plan shall have been implemented as a result of the Restructuring of the electric power industry.

- (c) The governing board or authority of the entities enumerated in Section 3 (b) hereof shall have the sole prerogative to hire the separated employees as new employees who start their service anew for such positions and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.
- (d) In no case shall there be any diminution of benefits under the separation plan until the full implementation of the Restructuring of the electric power industry and the Privatization of NPC assets in accordance with the approved Restructuring and Privatization schedule.
- (e) For this purpose, "Salary," as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding *per diems*, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.
- (f) Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act.

SEC. 4. *Funding.* –

Funds necessary to cover the separation pay under this Rule shall be provided either by the Government Service Insurance System (GSIS) or from the corporate funds of the NEA or the NPC, as the case may be; and in the case of the DOE and the ERB, by the GSIS or from the

general fund, as the case may be.

The Buyer or Concessionaire or the successor company shall not be liable for the payment of the separation pay.

SEC. 5. *Preferential Rights of Employees.* –

Displaced or separated personnel as a result of the Restructuring of the electric power industry and Privatization of NPC assets shall be given preference in the hiring of manpower requirements of the newly-created offices or the privatized companies: *Provided*, That the displaced or separated personnel meet the prescribed qualifications. With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment (DOLE), shall endeavor to implement re-training, job counseling, and job placement programs.

SEC. 6. *Implementation.* –

The DOE, NEA, and NPC, shall issue guidelines applicable to their respective employees to implement this Rule within ninety (90) days from effectivity of these Rules: *Provided*, That in the case of ERC, the independent quasi-judicial body created under the Act, the manner of, and timetable for, implementation of its organization shall be governed by Section 38 and Section 39 of the Act.

**RULE 34. EDUCATION AND PROTECTION OF END-USERS**

SECTION 1. *Guiding Principle.* –

Consistent with the declared policy that the State shall protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power, and pursuant to Section 76 of the Act, the public shall be educated on the Restructuring of the electric power industry and Privatization of NPC.

SEC. 2. *Consumer Education.* –

The DOE shall undertake, in coordination with the ERC, NPC, NEA and the Department of Education (DepEd), DTI, Office of the Press Secretary (OPS) – Philippine Information Agency (PIA), the academe, and the non-government organizations and consumer groups or associations, continuing information, education and communication program for consumers. This shall include, but not be limited to, the following:

- (a) Industry Restructuring and NPC Privatization;
- (b) Implementation of Retail Competition and Open Access and their impact on End-users and on the proper use of electric power. It shall include the existence of competitive electricity suppliers, choice of competitive electricity services, regulated transmission and distribution services, systems reliability, aggregation, market, itemized billing, Stranded Cost, uniform disclosure requirements, low income bill payment, energy conservation and safety measures, among other topics; and
- (c) Implementation of these Rules.

### SEC. 3. *Consumer Protection.* –

The ERC shall ensure consumer choice and promote consumer interests. It shall issue the appropriate guidelines and mechanisms to handle the following:

- (a) Speedy resolution of consumer complaints;
- (b) Creation of a permanent consumer complaint desk at ERC and in all electric utilities and other providers of electric power to oversee the promotion of consumer interests; and
- (c) Dissemination of rate-related resolutions, including posting in the ERC website and the publication of all notices of hearings to be conducted by the ERC for the

purpose of fixing rates or fees at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.

### **RULE 35. FINES AND PENALTIES**

Pursuant to Section 46 of the Act, the following are the fines and penalties:

- (a) The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with the Act or these Rules shall range from a minimum of Fifty Thousand Pesos (P 50,000.00) to a maximum of Fifty Million Pesos (P 50,000,000.00).
- (b) Any Person who is found guilty of any of the prohibited acts pursuant to Section 45 of the Act shall suffer the penalty of *prision mayor* and a fine ranging from Ten Thousand Pesos (P 10,000.00) to Ten Million Pesos (P10,000,000.00), or both, at the discretion of the court.
- (c) The members of the Board of Directors of the juridical companies participating in or covered in the Generation Companies, the Distribution Utilities, the TRANSCO or its Buyer or Concessionaire or Supplier who violate the provisions of the Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment from one (1) year or two (2) years or both at the discretion of the court. This Rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.
- (d) If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.
- (e) If the offender is an alien, he may, in addition to the penalties prescribed, be

deported without further proceedings after service of sentence.

- (f) Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.
- (g) The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.
- (h) To ensure compliance with the Act, the penalty of *prision correccional* or a fine ranging from Five Thousand Pesos (P 5,000.00) to Five Million Pesos (P 5,000,000.00), or both, at the discretion of the court, shall be imposed on any Person, including, but not limited to, the president, member of the board, chief executive officer or chief operating officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of the Act or these Rules, other than those provided herein.
- (i) Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.
- (j) In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions

of the Act.

## **PART VI – FINAL PROVISIONS**

### **RULE 36. SEPARABILITY CLAUSE**

Should any provision herein be subsequently declared unconstitutional, the same shall not affect the validity or the legality of the other provisions.

### **RULE 37. EFFECTIVITY**

These Rules shall take effect on the fifteenth (15th) day from the date of its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

February 27, 2002, Fort Bonifacio, Taguig, Metro Manila

**VICENTE S. PÉREZ, JR.**

Secretary

**APPROVED BY  
THE JOINT CONGRESSIONAL POWER  
COMMISSION  
THIS 27th DAY OF FEBRUARY 2002**

**SEN. RENATO “COMPAÑERO” L. CAYETANO**

Co-Chairman, Senate Panel

**REP. ALIPIO CIRILO V. BADELLES**

Co-Chairman, House of Representatives

**SEN. JOHN H. OSMEÑA**

Vice-Chairman

**REP. FLORENCIO B. ABAD**

Vice-Chairman

**SEN. JOKER P. ARROYO**

Member

**REP. JULIO A. LEDESMA IV**

Member

**SEN. FRANCIS N. PANGILINAN**

Member

**REP. RUY ELIAS C. LOPEZ**

Member

**SEN. AQUILINO Q. PIMENTEL JR.**

Member

**REP. AUGUSTO H. BACULIO**

Member

**SEN. TERESA AQUINO ORETA**

Member

**REP. FAYSAH MANIRI-RACMAN DUMARPA**

Member

**SEN. SERGIO R. OSMEÑA III**

Member

**REP. CONSTANTINO G. JARAULA**

Member

## **RULES AND REGULATIONS IMPLEMENTING SECTION 28 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY ACT OF 2001**

---

Consistent with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities as enunciated under Section 28 of Republic Act No. 9136, otherwise known as the *Electric Power Industry Act of 2001*, the Energy Regulatory Commission hereby adopts and promulgates the following rules and regulations to implement the aforesaid section.

SECTION 1. *Definition of Terms.* – As used in these Rules:

- (a) “*Common Share of Stock*” shall refer to the evidence of ownership in a stock corporation with complete voting rights;
- (b) “*Controlling Stockholders*” shall refer to the stockholders, natural or juridical, singly or collectively with related interests, owning more than 25% of the voting shares of a distribution utility.
- (c) “*De-monopolization*” shall refer to the process of removing control by a stockholder and related interests in a distribution utility through sale, transfer or other modes of disposition of their stockholding in excess of the ceiling prescribed under R.A. 9136;
- (d) “*Dispersal of Ownership*” shall refer to the sale, transfer or other modes of disposition of the stock ownership of persons, natural or juridical, including directors, officers, stockholders and their related interests in a distribution utility and their respective holding companies;
- (e) “*Distribution Utility*” shall refer to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with R.A. 9136;
- (f) “*Electric Cooperative*” shall refer to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in R.A. 9136;
- (g) “*Energy Regulatory Board (ERB)*” shall refer to the independent quasi-judicial regulatory body created under Executive Order No. 172, as amended;
- (h) “*Energy Regulatory Commission (ERC)*” shall refer to the independent quasi-judicial regulatory body created under R.A. 9136;

- (i) *“Holding Company”* shall refer to a juridical person holding more than 25% of the voting stocks of a distribution utility;
- (j) *“Person”* shall refer to any being, natural or juridical, capable of possessing legal rights and obligations, or of being the subject of legal relations;
- (k) *“Philippine Stock Exchange (PSE)”* shall refer to an entity created under the *Revised Securities Act* to manage the trading of shares of stocks of listed corporations;
- (l) *“Public Utility”* as referred to herein shall mean a distribution company which has been granted a franchise by the Congress of the Philippines and a Certificate of Public Convenience and Necessity (CPCN) by the Energy Regulatory Board or the Energy Regulatory Commission. This term shall likewise refer to an electric cooperative with existing franchise granted by the National Electrification Administration (NEA) subject to the provisions of Section 27 of R.A. 9136;
- (m) *“Related Interests”* shall refer to either a natural person related within the fourth civil degree of consanguinity or affinity to a director, officer or stockholder of a distribution company, or to juridical persons affiliated to each other through common business interest or belonging to a business group where the holdings of the stockholders altogether constitute a majority or control in one (1) or more enterprises;
- (n) *“Small Distribution Company”* shall refer to a distribution facility whose peak demand is equal to or less than ten (10) MW.

SEC. 2. *Coverage.* – These Rules shall apply to all private distribution utilities except electric cooperatives.

SEC. 3. *Divestment of Shareholdings in Distribution Utilities.* – The holdings of any person, natural or juridical, including directors, officers, stockholders and their related interests in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the total voting shares of stock.

Any holding in excess of the ceiling prescribed herein shall be divested in accordance with these Rules.

SEC. 4. *Exemption from Divestment of Shareholdings.* – The provisions of the preceding section shall not apply to a distribution utility or the company holding the shares or its controlling stockholder/s whose shares are already listed on the PSE at the time of the effectivity of R.A. 9136.

SEC. 5. *Period of Divestment for Distribution Companies.* – Distribution Companies with peak demand of more than 10 MW, whose directors, officers, stockholders and their related interests together with their respective holding companies, own more than twenty-five (25%) percent of the total voting shares of stocks, are hereby directed to cause the listing of their common shares of stock on the PSE within three (3) years from the effectivity of these Rules but not later than five (5) years from the effectivity of R.A. 9136.

Small Distribution Companies whose directors, officers, stockholders and their related interests together with their respective holding companies own more than twenty-five (25%) percent of the total voting shares of stock are required to list their shares on the PSE within five (5) years from the effectivity of R.A. 9136.

Small Distribution Companies which, after the date of effectivity of R.A. 9136, shall have new directors, officers, stockholders and their related interests together with their respective holding companies owning more

than twenty-five (25%) percent of their total voting shares of stock shall undertake such listing within five (5) years from the time said stockholders acquire ownership and control over the companies.

The requirements of the preceding paragraphs shall be deemed to have been complied with if the company holding their shares or the controlling stockholders have already caused the listing of their shares on the PSE within the period above prescribed.

SEC. 6. *Registration of Securities.* – Unless exempted, all stocks and securities of distribution utilities must be registered with the Securities and Exchange Commission (SEC), prior to their listing on the PSE.

The registration of stocks and securities shall be subject to the existing rules and regulations of the SEC.

SEC. 7. *PSE Listing.* – The registered voting stocks and securities of distribution utilities covered by these Rules shall be listed on the PSE in accordance with its applicable rules and regulations.

SEC. 8. *Reportorial Requirements.* – Distribution utilities covered by these Rules

shall, within sixty (60) days upon listing of their common shares of stock on the PSE, submit reports to the ERC on the extent of their compliance herewith together with Certifications from the PSE showing the number of shares listed, names of the shareholders presently owning the said shares and other relevant informations for monitoring and verification purposes.

SEC. 9. *Imposition of Fines and Penalties.* – Any person, natural or juridical, found guilty of violating these rules and regulations shall be subject to the penalties provided under Section 46 of R.A. 9136.

SEC. 10. *Separability Clause.* – If for any reason, any section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 11. *Effectivity Clause.* – These Implementing Rules and Regulations shall take effect on the fifteenth (15th) day following its publication in two (2) newspapers of general circulation.

Pasig City, August 24, 2001.

**AMENDMENTS TO SECTION 4(E) OF RULE 3 AND SECTION 7  
OF RULE 18 OF THE IMPLEMENTING RULES AND REGULATIONS (IRR)  
OF REPUBLIC ACT NO. 9136 OTHERWISE KNOWN AS  
THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA)**

Pursuant to the Department of Energy's mandate under the EPIRA, the following amendments to Section 4(e) of Rule 3 and Section 7 of Rule 18 of the EPIRA IRR are hereby promulgated.

**Section 1.** Section 4(e) Rule 3 of the EPIRA IRR is hereby amended to read as follows:

“Section 4. Responsibilities of the ERC.

(e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgment of receipt of a copy thereof by the LGU Legislative Body



of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

This Section 4 (e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance with Section 36 of the Act.

This Section 4 (e) shall not apply to Generation Rate Adjustment Mechanism (GRAM), Incremental Currency Exchange Recovery Adjustment (ICERA), Transmission Rate Adjustment Mechanism,

Transmission True-up Mechanism, System Loss Rate Adjustment Mechanism, Lifeline Rate Recovery Mechanism, Cross-Subsidy Mechanism, Local Franchise Tax Recovery Mechanism, Business Tax Recovery Mechanism, Automatic Generation Rate Adjustment Mechanism, VAT Recovery Mechanism, Incremental Generation Cost Adjustment Mechanism, and Recovery of Deferred Accounting Adjustment for Fuel Cost and Power Producers by NPC and NPC-SPUG, provided that, such adjustments shall be subject to subsequent verification by the ERC to avoid over/under recovery of charges.”

**Section 2.** Section 7 of Rule 18 is hereby amended to read as follows:

“Section 7. Deferment.

All Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of three (3) years from June 30, 2007: *Provided*, that, such Self-Generation Facilities shall register with ERC and PSALM.”

**Section 3.** *Effectivity.* The amendments shall take effect three (3) days following its publication in two (2) newspapers of general circulation.

Energy Center, Fort Bonifacio, Taguig City, Metro Manila, 21 June 2007

**RAPHAEL P.M. LOTILLA**  
Secretary

## DEPARTMENT CIRCULAR NO. 2004-01-001

PRESCRIBING THE RULES AND PROCEDURES FOR PRIVATE SECTOR PARTICIPATION IN EXISTING NPC-SPUG AREAS PURSUANT TO RULE 13 OF THE IMPLEMENTING RULES AND REGULATIONS OF THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA-IRR)

---

**WHEREAS**, it is the declared policy of the State to ensure and accelerate the total electrification of the country;

**WHEREAS**, under Section 1 of Rule 13 of the EPIRA IRR, the Department of Energy (DOE) is tasked to issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties including utilities and qualified third parties can participate in the missionary electrification;

**WHEREAS**, under Section 3 of the EPIRA IRR, the Small Power Utilities Group of the National Power Corporation (NPC-SPUG), is mandated to periodically assess the requirements and prospects of bringing power generation and associated power delivery systems to commercial viability on an area-by-area basis including a program to encourage private sector participation;

**WHEREAS**, missionary electrification functions of NPC-SPUG are funded from the revenues from sales in missionary areas and from the Universal Charge, the participation of private sector shall reduce the burden on the missionary electrification component on the Universal Charge (UC-ME);

**WHEREAS**, the participation of private sector in missionary areas shall reduce the burden on the UC-ME;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES**, the DOE hereby issues the following guidelines and procedures to guide and encourage the private sector to participate in existing NPC-SPUG areas:

### Section 1. Definition of Terms.

Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- (a) **“Act”** refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001;”
- (b) **“Best New Entrant Tariff”** refers to the tariff which would need to be charged by an efficient entrant to cover its costs and earn a reasonable return on capital;
- (c) **“Commercially Viable”** refers to an area or service where the resultant True Cost Generation Rate is equal to or less than the Socially Acceptable Generation Rate;
- (d) **“Conclusion Program”** refers to the program prescribing the period/duration that the UC-ME will be made available to the New Private Provider (or “NPP”) from the effectivity date of the takeover of an NPC-SPUG area;
- (e) **“Floor Price”** refers to the price at which NPC-SPUG specifies it is willing to sell an asset to an NPP selected to serve an NPC-SPUG area. The Floor Price may be set at a fair value, as appraised by an independent appraiser, or to the book value of the asset;
- (f) **“Graduate”** refers to any area where provision of Missionary Electrification Subsidy is remove/stopped, by reason that the area or service is deemed Commercially Viable;

- (g) **“IRR”** refers to the implementing rules and regulations of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001;”
- (h) **“Missionary Electrification”** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;
- (i) **“Missionary Electrification Subsidy”** refers to the subsidy approved by ERC to be paid to an NPP to allow it to recover its True Cost Generation Rate while charging the Distribution Utility the Socially Acceptable Generation Rate. The Missionary Electrification Subsidy shall be funded from the UC-ME based on the petition filed by NPC-SPUG;
- (j) **“New Missionary Areas”** refers to an area declared Unviable by the Distribution Utility for any reason and offered to private sector for supply of electricity;
- (k) **“New Private Provider”** or **“NPP”** refers to an entity deemed technically and financially capable to serve/take over existing NPC-SPUG areas, resulting from the competitive bidding exercise;
- (l) **“NPC-SPUG”** refers to the functional unit of NPC created to pursue the Missionary Electrification function;
- (m) **“NPC-SPUG Area”** refers to a geographic area currently supplied with electricity generated by NPC-SPUG;
- (n) **“Power Supply Agreement”** or **“PSA”** refers to an Agreement between a power producer and a Distribution Utility for supply of power;
- (o) **“Socially Acceptable Generation Rate”** refers to the rate, which ERC has determined would be desirable, on social acceptability grounds, for a Distribution Utility to pay for power to supply a current or former NPC-SPUG area. The Socially Acceptable Generation Rate combined with the Missionary Electrification Subsidy should equal the True Cost Generation Rate;
- (p) **“Transaction Advisor”** refers to a professional/expert engaged by DOE to assist in developing the most appropriate privatization program for existing NPC-SPUG areas;
- (q) **“True Cost Generation Rate”** refers to the full efficient costs of generating power in an area. For the purpose of this Circular, True Cost Generation Rates shall be determined on the same basis provided for under Section 43(f) of the Act for setting or determining transmission wheeling rates and retail rates for the captive market of a Distribution Utility to allow sufficient recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably; and
- (r) **“Unviable Area”** refers to a geographical area within the Franchise Area of a Distribution Utility where immediate extension of distribution line is not feasible;

Other words and phrases have the same meanings as in EPIRA and its IRRs.

## **Section 2. Declaration of Policies for Missionary Electrification.**

- (a) This Circular shall only apply to all areas being served by NPC-SPUG.
- (b) All existing NPC-SPUG areas are hereby declared open for private sector participation. For the purpose of this Circular, private sector participation shall mean “the take over of the supply of electricity to any existing NPC-SPUG areas, either through outright purchase

or lease existing NPC-SPUG assets, and/or installation of new power generating facilities including associated power delivery systems.”

- (c) NPC-SPUG shall endeavor to privatize its power generation facilities and associated power delivery systems.
- (d) When NPC-SPUG ceases to serve an area, it may sell its assets in the area or redeploy to serve another area. The sale of assets of NPC-SPUG shall follow the government’s standard accounting procedures.
- (e) Distribution utilities currently sourcing power supply from NPC-SPUG, wholly or partly, are encouraged to seek NPPs. The NPPs shall be selected based on competitive bidding with the view to minimize power purchase cost of the Distribution Utility.
- (f) In cases where a Distribution Utility does not select an NPP, NPC-SPUG will assign its existing Power Supply Agreement (PSA) to a competitively selected NPP, if this would lead to a reduction in the total cost of power supply.
- (g) DOE shall promote policies that will strengthen governance structure such as protection of investors’ rights and consumer education in NPC-SPUG areas that were taken over the NPPs.
- (h) The DOE shall prescribe the Conclusion Program in existing NPC-SPUG areas taken over by NPPs to optimize the utilization of the UC-ME.

**Section 3. Procedures for Selection of New Power Providers.**

- (a) A competitive process shall be used to select one or more NPPs to supply power to each NPC-SPUG area.

- (b) The competitive process shall be designed to ensure that prospective NPPs intending to participate in NPC-SPUG privatization program possess suitable level of financial and technical capacity. The process design shall give due consideration to achieving the lowest long-term cost of power and services, environmental compatibility with the local area, and the most advantageous implementation schedule.
- (c) Distribution Utilities operating in existing NPC-SPUG areas shall have the following options in managing the competitive process for the selection of their respective NPPs:
  - (i) Request DOE to secure a Transaction Advisor or engage the services of a Transaction Advisor, at its own cost, to assist in selecting the appropriate NPP;
  - (ii) Allow NPC-SPUG to assign its existing PSA to an NPP through a competitive process; or
  - (iii) Manage the competitive selection process by itself
- (d) To ensure an orderly and well managed process, Distribution Utilities operating in NPC-SPUG areas shall be grouped into ‘waves,’ based on the suitability of the area for supply by an NPP:
  - (i) The first wave shall include areas deemed most attractive for NPPs, or which are causing the greatest losses to NPC-SPUG;
  - (ii) DOE shall notify the Distribution Utilities in a wave that they are to choose one of the three options to select their NPP/s. After being so notified by DOE, a Distribution Utility must within two (2) months, notify DOE and NPC-SPUG, which option

it, has selected. If the Distribution Utility does not notify DOE or NPC-SPUG within the prescribed time period, it shall be deemed to have selected option under Section 3 (c ) (ii).

(iii) Any Distribution Utility, which wishes to be included in the first 'wave' may notify DOE, and shall be so included.

(iv) Distribution Utilities, which selected option under Section 3(c )(iii), shall be monitored by DOE to ensure that their progress toward selection of an NPP is comparable to that of the Distribution Utilities, which opted to use option under Section 3 (c ) (i) or option under Section 3(c) (ii). If a Distribution Utility falls significantly behind schedule compared to Distribution Utilities under the other two options, DOE may offer that Distribution Utility the option to adopt Section 3 (c )(i), or may assign it to option under Section 3 (c )(ii) (i.e., NPC-SPUG shall select the NPP and assign its PSA, thus removing the Distribution Utility's control of the process)

(e) Once an NPP has been selected, NPC-SPUG shall accordingly assign, amend or terminate its PSA with the concerned Distribution Utility in such a way as to provide a smooth and efficient transition to the NPP.

(f) Towards this end, NPC-SPUG shall, within one (1) month from effectivity of this Circular, prepare and submit to DOE its proposed groupings or waves, consistent with subparagraph (d) of this section.

#### **Section 4. Disposal of Surplus NPC-SPUG Assets.**

(a) NPC-SPUG shall dispose of its surplus assets once an NPP is in place and NPC-

SPUG phases out supply and services to the area.

(b) Disposal of Generation-related assets. All generation assets and other NPC-SPUG assets, which were used to serve an area, with the exception of sub-transmission assets, will be disposed of through the following process:

(i) NPC-SPUG shall offer the winning NPP the right to buy the assets at a Floor Price. The option to purchase, together with the Floor Price, shall be provided in the PSA bidding documents.

(ii) The Floor Price shall be set by an independent appraiser, based on the value of the asset to NPC-SPUG in other uses or its sound value, or may be set at the book value of the asset.

(iii) In the event that the winning NPP does not exercise its option to purchase the assets at the set floor price, NPC-SPUG may redeploy the asset to serve another NPC-SPUG area, or otherwise shall, within two (2) months, auction the assets through an open, ascending bidding process.

The winning NPP shall have the right to participate in this auction

(c) Disposal of Sub-transmission Assets.

NPC-SPUG shall dispose of its sub-transmission assets according to the following process:

(i) NPC-SPUG shall first offer the sub-transmission assets to the relevant Distribution Utility they serve, using the same procedure as that set out for sale of National Transmission Company (TRANSCO) sub-transmission assets to Distribution Utilities prescribed in Section 8

of EPIRA, Rule 6 of EPIRA IRR and guidelines issued by the Energy Regulatory Commission (ERC) on 17 October 2003 on the sale and transfer of the TRANSCO sub-transmission assets and franchising of qualified consortia. This includes determining the disposal value of the assets on the basis of its revenue potential.

- (ii) If the Distribution Utility does not agree to buy the sub-transmission assets, NPC-SPUG shall offer the sale to any consortium of Distribution Utilities or to TRANSCO at the same price.
- (iii) If no buyer for the assets can be found, NPC-SPUG shall endeavor to enter into an operations and maintenance (O & M) contract with the relevant Distribution Utility operating in the area, under which the Distribution Utility takes over responsibility for operating and maintaining the sub-transmission assets.
- (iv) In the event that NPC-SPUG continues to own the sub-transmission assets, NPC-SPUG shall review and optimize its operating costs, and apply to ERC for a rate increase to cover the full cost of operating and maintaining sub-transmission services.

#### **Section 5. Additional Functions of NPC-SPUG.**

In addition to its existing functions, NPC-SPUG shall perform the following:

- (a) Petition ERC on the proposed regulatory regime aimed at encouraging private sector participation in existing NPC-SPUG areas:
  - (i) NPC-SPUG will petition ERC to implement a regulatory regime with the following key characteristics:

- (1) NPPs supplying taken-over NPC-SPUG areas may charge the True Cost Generation Rates;
- (2) True Cost Generation Rates shall be established based on competitive bidding to supply at least cost, or in cases where there was not effective competitive bidding, through application of Best New Entrant tariff benchmarking;
- (3) In cases where DOE considers the True Cost Generation Rate too high to be socially acceptable, NPC-SPUG shall petition ERC to set a Socially Acceptable Generation Rate, and for a Missionary Electrification Subsidy to be paid from the UC-ME. The Missionary Electrification Subsidy will be calculated as the difference between the True Cost Generation Rate and the Socially Acceptable Generation Rate;
- (4) The Socially Acceptable Rate may rise over time in line with development of an area, and as a result the Missionary Electrification Subsidy for an area may be set to decline over period;
- (5) When the Socially Acceptable Tariff is equal to or higher than the True Cost Generation Tariff, an area shall be considered Commercially Viable, and NPC-SPUG shall no longer petition ERC for Missionary Electrification Subsidy for such areas, which will be referred to as having Graduated;
- (6) ERC will be petitioned to determine the Missionary Electrification Subsidy to be

provided to the NPP serving the area, and the Socially Acceptable Generation Rate consistent with that subsidy;

- (7) If a Missionary Electrification Subsidy is provided to the NPP serving an area, the NPP shall be required by regulation and/or the terms of the PSA to reduce its charges to the Distribution Utility commensurate with the subsidy received. The principle is that the tariff revenue and the subsidy should, taken together, be equivalent to the True Cost Generation Rate; and
  - (8) At all times, the NPP serving a taken over NPC-SPUG area has the right to charge its True Cost Generation Rate if it does not receive a subsidy which covers the difference between the True Cost Generation Rate and the Socially Acceptable Rate.
- (b) Assist Distribution Utilities operating in existing NPC-SPUG areas to enter PSAs with NPPs.
  - (c) Ensuring that New Missionary Areas are served effectively and efficiently by Qualified Third Parties (QTPs) wherever possible, and by NPC-SPUG directly in the event that no QTPs are willing to serve the area.
  - (d) Ensure payment of the subsidies to entities qualified to avail subsidies from

the UC-ME, as determined by the ERC.

### **Section 6. Non-Retroactivity**

This Circular does not apply to PSAs where tariff rates have been approved by the ERC before the date of effectiveness of the Circular.

### **Section 7. Repealing Clause.**

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

### **Section 8. Saving Clause.**

- (a) If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.
- (b) The implementation of this Circular shall not exempt the parties from applicable laws, rules and regulations.

### **Section 9. Effectivity.**

This Circular shall take effect upon its complete publication in a newspaper of general circulation.

**VICENTE S. PEREZ, JR.**  
**Secretary**

Fort Bonifacio, Taguig, Metro Manila,  
Philippines, 26<sup>th</sup> January 2004.

## DEPARTMENT CIRCULAR NO. 2005-12-011

PRESCRIBING THE GUIDELINES FOR PARTICIPATION OF QUALIFIED THIRD PARTIES (QTPs) FOR PROVISION OF ELECTRIC SERVICE IN REMOTE AND UNVIABLE AREAS, PURSUANT TO SECTIONS 59 AND 70 OF “THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001, “ AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR)

---

**WHEREAS**, Section 2 (a) of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “ EPIRA”, declared the policy of the State to ensure and accelerate the total electrification of the country;

**WHEREAS**, the Department of Energy (DOE) is tasked to develop and manage the electrification of rural and missionary areas nationwide, and to formulate annually a five (5) year Missionary Electrification Development Plan (MEDP) that will identify among others, the additional capacity in existing missionary areas as well as the facilities to be provided in areas not connected to the transmission system;

**WHEREAS**, Rule 13 (Missionary Electrification) of the Implementing Rules and Regulations (IRR) of “EPIRA” or “EPIRA-IRR”, mandates the DOE to issue specific guidelines on how to encourage the inflow of private capital and the manner in which other parties can participate in the projects set forth in the MEDP;

**WHEREAS**, Section 59 (Alternative Electric Service for Isolated Villages) of the EPIRA recognizes the provision of electric service by Qualified Third Parties (QTPs) in remote and unviable areas that the franchised utility is unable to service;

**WHEREAS**, pursuant to Section 4(p) of Rule 7 of the EPIRA-IRR, the DOE has issued on 20 February 2004, Department Circular (DC) No. 2004-02-02 “*Prescribing Guidelines for the Formulation of Five-Year Distribution*

*Development Plan (DDP)*”(DDP Circular) which requires all Distribution Utilities (DUs) to, among others, identify and submit to DOE the list of barangays within their respective franchise areas that are deemed remote, unviable and cannot be provided with electric service within the next three (3) years;

**WHEREAS**, the DOE has likewise issued Department Circular (DC) No. 2004-06-006 on 18 June 2004 (DOE QTP Qualification Circular), prescribing the qualification criteria for the QTPs that may participate in the provision of electricity to remote and Unviable Areas;

**WHEREAS**, there is a need to revise and update the qualification criteria and to include the process by which areas shall be selected for the QTP program and for which QTPs will be selected, as set forth in the DOE QTP Qualification Circular;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES**, the DOE hereby promulgates the following guidelines, expanding and complementing the DOE QTP Qualification Circular for private sector participation in Unviable Areas consistent with the EPIRA and the missionary electrification program of the Government as prescribed in the MEDP.

### Section 1. Definition of Terms

(a) “Department of Energy” or “DOE” refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the Act;



- (b) “Distribution Utility or “DU” as defined by Section 4(q) of the EPIRA refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA;
- (c) “Energy Regulatory Commission or “ERC” refers to the independent, quasi-judicial regulatory agency created under Section 38 of EPIRA which shall, among others, promote competition, encourage market development, have exclusive jurisdiction over all cases contesting rates, fees, fines and penalties, as well as fix and approve the Universal Charge imposed on all electricity consumers for purposes provided in the EPIRA;
- (d) “Full Cost Recovery Rate” or FCRR shall refer to the rate, expressed in Peso per kilowatt-hour that recovers the full efficient costs of generating, distributing and supplying electricity. The FCRR must be sufficient to enable the QTP to operate viably
- (e) “Generation Company” as defined by Rule 4 (ddd) and cross-referenced to Section 70 of the EPIRA IRR refers to any person or entity authorized by the Energy Regulatory Commission to operate facilities used in the generation of electricity;
- (f) “Missionary Electrification” refers to the power generation and associated delivery systems function of NPC-SPUG that shall be funded from the Universal Charge for Missionary Electrification which consists of providing basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels, as defined in Rule 4 (ddd) and cross-referenced to Rule 13, Section 1 (a) and (b) of the EPIRA-IRR;
- (g) “Missionary Electrification Development Plan” or “MEDP” refers to the five- (5) year plan of the DOE, updated annually, to implement the Government’s missionary electrification program funded through the share in the Universal Charge for Missionary Electrification;
- (h) “Missionary Electrification Subsidy” refers, for purpose of this Circular, to the funds duly approved by the ERC to cover the difference between the Full Cost Recovery Rate and Subsidized Approved Retail Rate of a Qualified Third Party sourced from the Universal Charge for Missionary Electrification;
- (i) “Person” refers to a natural or juridical person, as the case may be;
- (j) “Power Sector Asset and Liabilities Management Corporation” or “PSALM” refers to the corporation created pursuant to Section 49 of the EPIRA; (as defined in Section 4 (oo) of the EPIRA)
- (k) “Qualified Third Party” or “QTP” refers to the alternative electric service provider that meets the standards and chosen in accordance with the process set forth in this Circular, duly qualified and authorized by the ERC to serve Unviable Areas pursuant to Section 59 (Alternative Electric Service for Isolated Villages) of the EPIRA and Rule 14 (Provision of Electricity by Qualified Third Parties) of the EPIRA-IRR;
- (l) “QTP Service Contract” refers to the agreement, duly approved by the ERC between NPC and the Qualified Third Party defining the latter’s responsibilities in providing the service of missionary electrification in Unviable Areas. This agreement shall set the terms and conditions by which the QTP shall provide the service, such as but not limited to the tariff levels, other electric service charges, the applicable performance and

service standards required for qualified third party service providers;

- (m) "QTP Service Area" refers to the geographic area corresponding to the Unviable Area/s where QTP shall provide missionary electrification service;
- (n) "Renewable Energy Resources" refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider available over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;
- (o) "Subsidized Approved Retail Rate" or "SARR" shall refer to the rate, expressed in Peso per kilowatt-hour, that the ERC has determined to be the maximum that an end-user should pay for power supplied by a QTP. Revenue from the Subsidized Approved Retail Rate combined with the Missionary Electrification Subsidy should put the QTP in the same financial position as if it was able to charge the Full Cost Recovery Rate;
- (p) "Unviable Area" refers to a geographical area within the franchise area of a Distribution Utility where the immediate extension of distribution line is not feasible, as defined by Rule 4 (ssss) of the EPIRA-IRR. For purposes of this Circular, the term "remote and unviable area" in the EPIRA, EPIRA-IRR or other laws or issuances shall mean "Unviable area" as defined herein; and,
- (q) "Universal Charge" refers to the charge if any, imposed for the recovery of stranded cost and other purposes pursuant to Section 34 of the EPIRA;
- (r) "Universal Charge for Missionary Electrification" or "UC-ME refers to the portion of the Universal Charge which

designated for Missionary Electrification; and

- (s) "Waiver Contract" refers to the contract entered into between the Distribution Utility and the QTP pursuant to Rule 14 Section 5(a) of the EPIRA IRR wherein the DU transfers the responsibility to service the area described therein. For avoidance of doubt, the franchise of the DU shall not be transferred, abandoned and/or modified with respect to the Unviable Area included therein but only the right to service such area shall be deemed assumed by the QTP.

## Section 2. Declaration of Policies

It is hereby declared the policies of the DOE that:

- (a) All DUs shall endeavor to provide electricity service to all areas within their respective franchise areas, including remote and unviable areas, in an efficient and sustainable manner consistent with their respective franchises or authorities. Should the DU fail to serve the remote and unviable areas within its franchise area, the same may be opened for private sector participation and included in the QTP program.
- (b) All areas identified by the DUs to be remote and unviable shall be declared open for QTP participation by the DOE in consultation with and based on the criteria set forth by the National Electrification Administration (NEA). Upon selection and qualification of the QTP to service a particular area, the concerned DUs shall then transfer its rights to said selected and qualified QTP. No fee for the transfer of rights to serve the Unviable Areas shall be paid to the DU.
- (c) The participation as a QTP shall be open to any party, including but not limited

to private firms, local government units, cooperatives, non-government organizations, generation companies or their subsidiaries or subsidiaries of DUs who has demonstrated the capability and willingness to comply with the relevant technical, financial, and other requirements through a competitive or transparent process. A DU or its subsidiary shall not be qualified to participate as a QTP for the area/s it has waived.

- (d) All QTPs shall adopt least-cost and most efficient technology options in serving Unviable Areas. In determining the QTP, preference shall be given to persons or entities that can offer the least-cost technologies utilizing renewable energy resources.

### Section 3. Declaration of Unviable Areas

The DOE hereby adopts the following procedures in the declaration of Unviable Areas:

- a. **Classification of Areas.** The DU shall classify the unelectrified areas within its franchise between viable and unviable areas. In line with the DDP Circular, the DUs shall comply with the submission of duly accomplished DOE-EPIMB Form No. 03-002 on the list of areas to be waived (attached as Annex "A"), through DOE – Electric Power Industry Management Bureau (DOE-EPIMB).
- (b) **NEA Verification.** NEA shall verify the basis or justification upon which the DUs have selected or nominated remote and unviable areas within its franchise as part of the QTP program. NEA shall submit its proposed evaluation criteria to the DOE for clearance no later than thirty (30) days from the issuance of this Circular and shall thereafter be published in the NEA Bulletin and DOE website at [www.doe.gov.ph](http://www.doe.gov.ph) for information of all DUs concerned.

- (c) **Consolidation of List of Areas.** The DOE-EPIMB, shall consolidate and make available through publication, the list of Unviable Areas that will be offered to QTPs.

- (d) **Publication of Unviable Areas.** The DOE shall declare and publish the list of Unviable Areas not later than September of every year. The list shall also be made accessible to the public through posting in the DOE website at [www.doe.gov.ph](http://www.doe.gov.ph).

- (e) If no candidate QTP submitted an EOI in a particular Unviable Area/s, the request for the submission of EOI shall continue to hold for at least two (2) months from the first publication. In the event that no EOI is submitted within this two (2) month period, the DOE shall include the area/s in its other missionary electrification programs.

### Section 4. Procedures for Selecting Candidate QTPs

- (a) The publication referred to in Section 3(d) shall serve as the call for "Expression of Interest" (EOI) to all interested parties willing to provide electricity services through QTP participation.
- (b) Any person or entities who wish to perform the QTP function in a particular Unviable Area/s shall submit to DOE an EOI which shall include the following:
  1. Official Letter of Intent;
  2. Profile of the Company or Organization;
  3. Relevant registration from Securities and Exchange Commission, Department of Trade and Industry, NEA or Cooperative Development Authority, whichever is applicable; and

4. Other relevant and readily available supporting documents.

- (c) The DOE-EPIMB shall receive all EOIs and maintain records of all entities who have expressed interests in serving any remote and unviable area on a per service area basis.
- (d) This Circular together with the DOE QTP Qualification Circular shall serve as the documents providing the basis for selecting candidate QTPs. On the basis of the criteria for qualification identified in said Circulars, the DOE EPIMB shall evaluate the capacity of every applicant based on the documents officially submitted and such additional documents in support the application that may be requested by the DOE-EPIMB.
- (e) The DOE shall inform in writing all parties who submitted EOI of the results of its evaluation.
- (f) Party/ies that meet the set criteria will be recommended to the DOE Secretary for confirmation as candidate QTPs in respect of a particular service area/s as specified in the EOI.

#### **Section 5. Procedure for the Selection of QTP to Serve Unviable Areas**

The following rules shall govern the selection of the QTP:

- (a) The DOE shall issue the Request for Proposal (RFP) to all candidate QTPs. The RFP shall establish the process of evaluation and selection of QTP for a particular Unviable Area/s.

For each QTP Service Area, the RFP issued by DOE shall contain the following:

- (i) Copy of the Model QTP Service Contract package consisting of the Waiver Contract and Subsidy and

Disbursement Agreement (SDA), all duly approved by the ERC;

- (ii) Minimum technical and financial requirements, such as:
  - a. Minimum hours of continuous electricity service;
  - b. Type of technology to be used (optional);
  - c. Minimum equity requirements for the project's financial structure; and
  - d. Other measures of project feasibility that may be required by the DOE.
- (iii) Criteria for evaluation of proposals; and
- (iv) Other information deemed necessary by the DOE for a full evaluation of proposals.

- (b) The QTP shall then submit the following:
  - (i) Its proposed QTP Service Area naming the specific Unviable Area/s covered by RFP;
  - (ii) Outline of the proposal to specify the data requirements but not limited to the following:
    - a. Proposed details of the electrification solution or technology to be applied for the target area;
    - b. Number of potential and target household connections as well as indicative milestones/schedule of deliverables;
    - c. Proposed institutional and commercial arrangements (i.e.,

meter reading, billing, collection, disconnection policies and procedures, etc.);

- d. Expected date of commissioning/commercial operation of the project;
- e. Proposed FCRR and other charges to end-users; and
- f. Other information/documents to support the applicant's capability to provide efficient and reliable electricity as well as requirements prescribed in Circular No. 2004-06-006.

(iii) Other necessary requirements deemed necessary in the selection process of QTP.

(c) Each candidate QTP shall be given at least forty-five (45) calendar days from the issuance of the RFP to undertake due diligence and prepare the proposal (Due Diligence Period). Final and detailed proposals shall be submitted to and received by the DOE-EPIMB not later than five (5) working days after the last day of Due Diligence Period.

(d) The QTP selection process shall be completed within sixty (60) days from receipt of a complete and final proposal and all necessary documents by the candidate QTPs. The DOE shall notify in writing each candidate QTP that submitted proposals of the results of the selection process, indicating therein, as applicable, the particular Unviable Area/s that comprise the QTP Service Area/s.

(e) The DOE shall advise the candidate QTP to commence the negotiation for the signing of the QTP Service Contract with the NPC-SPUG. The DOE and NEA shall facilitate and assist the candidate QTP in finalizing and signing the Waiver Contract

with the concerned DU.

(f) After the signing of QTP Service Contract and related documents, the DOE shall endorse the candidate QTP with complete requirements to ERC for final qualification and authorization consisting of the issuance of all necessary permits and/or licenses and approval of tariffs to be passed on by the QTP to its end-users in the QTP Service Area.

(g) In the case there is more than one QTP proposal received to serve a particular area/s, the DOE EPIMB shall give preference to the proposal that can offer the most number of connections or highest level of electric service at lower cost applicable to a particular Unviable Area/s.

(h) In the case there is only one QTP proposal received to serve a particular area/s, the DOE-EPIMB shall publish in the DOE website at [www.doe.gov.ph](http://www.doe.gov.ph) for at least one (1) month from the publication date such relevant information on the proposal and invite other entities to match the offer.

## **Section 6. Rates and Subsidies for Unviable Areas**

(a) For the duration of the term of the QTP Service Contract, the QTP shall be deemed to be performing the missionary electrification service on behalf of NPC-SPUG with respect to the QTP Service Area.

(b) The DOE through NPC-SPUG consistent with its MEDP, shall petition the ERC to grant a UC-ME subsidy fund for QTPs.

(c) The QTP shall be eligible for subsidy with respect to its QTP Service Area in the event that the Full Cost Recovery Rate (FCRR) is determined to be higher than the Subsidized Approved Retail

Rate (SARR) with respect to said area/s. The difference in the FCRR and the SARR shall be the computed Missionary Electrification Subsidy based on a per connection system.

- (d) Payment or disbursement of UC-ME subsidy shall conform with the ERC-approved guidelines and procedures governing the remittances and disbursements of the Universal Charge developed and managed by the Power Sector Assets and Liabilities Management Corporation (PSALM), and to the subsidy disbursement mechanism to be included in the SDA for ERC approval.
- (e) Every year, the DOE shall incorporate in its MEDP the list of duly authorized QTPs and their corresponding subsidy requirements.

#### **Section 7. Responsibilities of the Qualified Third Party**

- (a) Meet the qualification criteria set by the DOE in the RFP;
- (b) Secure from ERC relevant permits and licenses, including authority to charge its rates, in order to commence providing services in its respective area/s;
- (c) Comply with all the provisions, including the financial, technical, environmental and other performance standard of the QTP Service Contract entered into with NPC-SPUG;
- (d) Submit periodic reports to ERC on its financial and technical performance pursuant to Rule 14 of the EPIRA-IRR;
- (e) Operate and maintain its facilities to provide services in the QTP Service Area in an efficient and sustainable manner;
- (f) Submit periodic reports to DOE on the status of its electrification program and

the completed number of connections; and

- (g) As applicable and with prior authority from ERC, charge and collect UC from all end-users within the QTP Service Area and remit the same to the DU or the National Transmission Corporation, as the case may be, in accordance with law.

#### **Section 8. Responsibilities of a Distribution Utility in Areas served by the Qualified Third Party**

- (a) Extend assistance to the QTP serving a QTP Service Area within its franchise; such assistance to include but not be limited to securing the necessary rights of way, site acquisition, and coordination with concerned local agencies.
- (b) Finalize and execute a Waiver Contract with the QTP with respect to the Unviable Area/s within its franchise.

#### **Section 9. Responsibilities of NPC-SPUG**

- (a) Ensure that the QTP shall serve its respective QTP Service Area by providing adequate and reliable electric service and performing in accordance with the standards set in the QTP Service Contract.
- (b) Review, finalize and execute the QTP Service Contract and Subsidy Disbursement Agreement with the selected QTP, in accordance with this Circular and ERC Guidelines on QTP.
- (c) Apply with the ERC for the approval of the SARR and the Missionary Electrification Subsidy.
- (d) Submit periodic reports to ERC on QTP performance relative to its compliance with the terms of QTP Service Contract and ERC guidelines.

- (e) Submit periodic reports to ERC and PSALM on the disbursement and utilization of the UC-ME.
- (f) Unless otherwise provided in the MEDP or an alternative arrangement with the affected DU, act as the service provider of last resort in case the QTP fails to fulfill its obligations to serve the areas awarded to the QTP.

**Section 10. Responsibilities of DOE**

- (a) Monitor rate of electrification for each QTP Service Area.
- (b) Conduct the QTP selection process, in coordination with the Technical Working Group formed pursuant to Section 12 herein, in accordance with this Circular and the RFP.
- (c) Determine and incorporate in the MEDP the QTP projects and corresponding UC-ME requirements, if any, in payment of the Missionary Electrification Subsidy.

**Section 11. Responsibilities of NEA**

- (a) Establish the criteria for verification of areas submitted or nominated by the DUs as remote and unviable areas for clearance by the DOE, in accordance with Section 3(b) of this Circular.
- (b) Evaluate and verify the areas submitted by DUs as remote and unviable and submit its recommendations to the DOE in accordance with Section 3 of this Circular.
- (c) Assist the DOE in monitoring of the rate of electrification by the QTP of the different QTP Service Areas.

**Section 12. Miscellaneous Provisions**

- (a) The DOE shall form a Technical Working Group composed of representatives from

DOE, NPC-SPUG, NEA, and PSALM to conduct, among others, the evaluation of proposals and recommend thereafter the candidate QTP to serve the Unviable Areas.

- (b) The DOE shall inform the ERC in writing of any significant variations between the executed QTP Service Contract and related agreements and the ERC pre-approved Model QTP Service Contract and related agreements.

- (c) The DOE shall assist NPC-SPUG in the preparation of the latter's proposal to ERC for approval a uniform Subsidized Approved Retail Rate for the purpose of determining the corresponding amount of Missionary Electrification Subsidy that each QTP shall be entitled to receive from NPC-SPUG.

- (d) To encourage investments and private sector participation in Unviable Area/s, the DOE shall coordinate with the ERC on the appropriate rate setting methodology that will provide for the QTPs full cost recovery of the investments incurred or to be incurred including the cost to cover their operation in the QTP Service Areas.

- (e) Consistent with Section 1(d) of Rule 13 of the EPIRA-IRR, the DOE shall include in the preparation of MEDP all the electrification projects to be undertaken by the QTPs in Unviable Areas for possible subsidy allocation to be funded through UC-ME.

- (f) The DOE, in consultation with the Technical Working Group, shall adopt a transition mechanism to govern existing waived areas and community-based organizations and provide for the inclusion of the same in the QTP program. For this purpose:

- (a) Areas that are currently served by the DUs but are deemed unviable on

account of huge operating costs may be offered by the concerned DUs for inclusion in the list of Unviable Areas or to be clustered with the Unviable Areas for inclusion QTP Program.

- (ii) Subject to any guidelines that the ERC may issue, private sector-driven or community-based electrification projects which do not require subsidy from the UC-ME may proceed with the service provided that the proponents/operators shall notify the DOE within three (3) months from the Effective Date of this Circular.

### Section 13. Repealing Clause

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

### Section 14. Saving Clause

- (a) If for any reason, any provision of this instrument/circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.
- (b) The implementation of this Circular shall not exempt the parties from existing government rules and regulations, and applicable government agency circulars or issuances.

### Section 15. Effectivity

This Circular shall take effect within fifteen (15) days upon publication in newspaper of general circulation.

**RAPHAEL P.M. LOTILLA**  
**Secretary**

Fort Bonifacio, Taguig City, Metro Manila, Philippines, 12 December 2005

## PRESIDENTIAL DECREE NO. 40

### ESTABLISHING BASIC POLICIES FOR THE ELECTRIC POWER INDUSTRY

---

**WHEREAS**, one of the primary concerns of the government in promoting the economic welfare of the people is to hasten the electrification of the entire country, more particularly the rural areas; and

**WHEREAS**, it is necessary to establish certain basic policies for the attainment of said objective;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, pursuant to Proclamation No. 1081 dated September 21, 1972, and

General Order No. 1 dated September 22, 1972, do hereby order and decrees, as part of the law of the land, the following basic policies for the electric power industry:

- (1) The attainment of total electrification on an area coverage basis, which is a declared policy of the State, shall be effected primarily through:
  - (a) The setting up of island grids with central/linked-up generation facilities.
  - (b) The setting up of cooperatives for distribution of power.



- (2) The setting up of transmission line grids and the construction of associated generation facilities in Luzon, Mindanao and major islands of the country, including the Visayas, shall be the responsibility of the National Power Corporation (NPC) as the authorized implementing agency of the State.
  - (a) Plant additions necessary to meet the increase in power demand of the area embraced by any grid set up by the NPC shall be constructed and owned by the NPC.
  - (b) In areas not embraced by the NPC grid, the State shall permit cooperatives, private utilities and local governments to own and operate isolated grids and generation facilities, subject to State regulation.
- (3) The distribution of electric power generated by the NPC shall be undertaken by:
  - (a) Cooperatives
  - (b) Private utilities
  - (c) Local governments
- (d) Other entities duly authorized subject to State regulation.
- (4) Within the area embraced by a grid set up by the NPC, the State shall determine privately-owned generating facilities which should be permitted to remain in operation.
- (5) It is the ultimate objective of the State for the NPC to own and operate as a single integrated system all generating facilities supplying power to the entire area embraced by any grid set up by the NPC.
- (6) The Power Development Council shall be expanded and strengthened to make it more effective in the planning and implementation of power and electrification projects and in the re-direction and re-orientation of the various sectors of the industry towards national development goals.

Done in the City of Manila, this 7th day of November, in the year of Our Lord, nineteen hundred and seventy-two.

## EXECUTIVE ORDER NO. 215

### AMENDING PRESIDENTIAL DECREE NO. 40 AND ALLOWING THE PRIVATE SECTOR TO GENERATE ELECTRICITY

**WHEREAS**, Presidential Decree No. 40 places the responsibility of setting up transmission line grids and the construction of associated generation facilities in Luzon, Visayas, Mindanao and the major islands of the country to the National Power Corporation (NPC);

**WHEREAS**, the generation of electricity, unlike the transmission and distribution of electricity, is not a natural monopoly and can be undertaken by more than one entity;

**WHEREAS**, the government, as a matter of policy, is encouraging the private sector to participate in economic development and has started to disengage in areas which can be adequately handled by the private sector;

**WHEREAS**, the generation of electricity by the private sector can provide a means of increasing power capacity to meet the projected increase in power demand in the future without in any way requiring financial assistance or guarantee from the government;

**WHEREAS**, there is, on the other hand, an imperative need to rationalize the development of energy resources and the operation of electric generating facilities in the power grid;

**NOW, THEREFORE**, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. The strategic and rational development of the country's power grids shall be the responsibility of the National Power Corporation. Accordingly, the setting up of transmission line grids and the construction of associated generating facilities in Luzon, Visayas, and Mindanao, including the major islands of the country, to meet the power demand, shall be the responsibility of the National Power Corporation. However, private corporations, cooperatives or similar associations shall be allowed to construct and operate the following types of electric generating plants, subject to the rules and regulations hereinafter adopted in accordance with Section 2 hereof:

- (a) Cogeneration units, defined as production of electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating or cooling purposes through sequential use of energy;
- (b) Electric generating plants, intending to sell their production to the grids, consistent with the developmental plans formulated by the National Power Corporation;
- (c) Electric generating plants, intended primarily for the internal use of the owner, which also plan to sell excess production to the grids; and
- (d) Electric generating plants, outside the National Power Corporation grids, intending to sell directly or indirectly to end-users.

SEC. 2. Rules and regulations to govern private sector involvement in power generation shall be formulated by the National Power Corporation for areas within the National Power Corporation grids, and the National Electrification Administration for areas outside the National Power Corporation grids. Such rules and regulations shall be made subject to consultation with concerned agencies including the private sector and the approval of the Office of Energy Affairs. These rules and regulations shall include the following:

- (a) Qualifications for accrediting private sector generations;
- (b) Procedures for applying for accreditation as a private sector generator of electricity;
- (c) Obligations of private sector generators which shall include efficiency standards to ensure reliability of power supply and the corresponding penalties for failure to comply with said standards;
- (d) Terms and conditions for the purchase or for the transmission/distribution, as the case may be, of electricity generated by non-National Power Corporation entities; and
- (e) Other matters which shall be necessary to implement this Order.

SEC. 3. The Office of Energy Affairs shall take the necessary measures to ensure that the provisions of this Order are made effective.

SEC. 4. The Department of National Defense shall assist the National Power Corporation, the private utilities and the electric cooperatives in providing security to the generating plants to prevent power black-outs, and in instituting the necessary safeguards in cases of emergencies, including the training of Armed Forces of the Philippines personnel in power generation operations.

SEC. 5. Numbers 2, 4, 5 and 6 of Presidential Decree No. 40 are hereby amended accordingly. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SEC. 6. This Executive Order shall take effect fifteen (15) days after the issuance of the rules and regulations for the implementation of this Executive Order.

Done in the City of Manila, this 10th day of July in the year of Our Lord, nineteen hundred and eighty-seven.

## **ENERGY REGULATIONS NO. 1-95**

### **RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 215 ON PRIVATE SECTOR PARTICIPATION IN POWER GENERATION**

---

Pursuant to Section 2 of Executive Order No. 215 (EO 215) allowing private sector participation in power generation activities, and relevant provisions of Republic Act No. 7638 (R.A. 7638) creating the Department of Energy (DOE), the DOE hereby promulgates the following amended Rules and Regulations to implement the provisions of EO 215.

The DOE shall provide policy directions for the formulation of power system expansion plans and programs to achieve the above-stated objectives, following the approved national economic plan and consistent with policies on environmental protection, and conservation and maintenance of ecological balance.

#### **PART I GENERAL PROVISIONS OF THE RULES AND REGULATIONS**

The succeeding Articles shall include the general provisions to be followed for all types of generating facilities owned by the private sector participating in power generation.

Pursuant to Section 1 of EO 215, the National Power Corporation (NAPOCOR) shall continue to be responsible for the strategic and rational development of the country's power grids including the construction of associated generating facilities and the setting up of transmission line grids in Luzon, Visayas, and Mindanao. However, private corporations, cooperatives or similar associations shall be allowed to construct and operate electric generating plants and associated transmission facilities.

#### **ARTICLE I STATEMENT OF POLICY, SCOPE AND DEFINITION OF TERMS**

**SECTION 1. *Statement of Policy.*** – Pursuant to the General Provisions of R.A. 7638, it is hereby declared a policy of the state to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the economic development of indigenous energy resources and through the efficient utilization of energy.

Furthermore, it is hereby declared the policy of the State to promote competition in generation, and to increase the responsibilities of all utilities to perform their own planning, including the acquisition of an efficient portfolio of generation and demand-side resources. It is the intent of the State that these rules promote the ability of all utilities to meet these expanded responsibilities, in

particular by ensuring transmission access at fair prices and by establishing standard NAPOCOR tariffs for services required by utilities when contracting for other sources of generation.

SEC. 2. *Scope.* – These Rules and Regulations shall govern the relation between the DOE, NAPOCOR, the National Electrification Administration (NEA), the Energy Regulatory Board (ERB), private electric distribution utilities and cooperatives, and such private corporations, cooperatives or similar associations as may be allowed to own and operate electric generating plants and facilities that will sell all or excess electricity production to the NAPOCOR, other electric utilities, and end-users in areas within and outside the NAPOCOR transmission grids, pursuant to Section 1 of EO 215.

These rules and regulations shall be the interim set of rules that shall be amended, replaced, or repealed in due time as restructuring and privatization efforts for the Philippine power industry moves through ongoing and anticipated phases towards an increasingly competitive and efficient industry structure for the Philippine power sector.

SEC. 3. *Definition of Terms.* – As used in these rules and regulations, the following terms shall have the following respective meanings:

- (a) “Avoided Cost” means the incremental cost that an electric utility would incur towards meeting its anticipated power demand if such utility does not buy power from a Private Sector Generation Facility (PSGF).
- (b) “Back-up Power” means electricity supplied by NAPOCOR, or an electric utility to replace electricity ordinarily generated by PSGF during unscheduled outages of the latter.
- (c) “Block Power Production Facility (BPPF)” means any electric generating facility intended primarily to sell all or the bulk

of its power output to the grid, consistent with the development plans formulated by NAPOCOR and/or electric utilities, approved by the DOE.

- (d) “Bottoming-cycle Cogeneration Facility” means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.
- (e) “Capacity” means the load for which a generating unit, generating station, or other electrical machine is rated by the manufacturer.
- (f) “Cogeneration Facility” means a facility which produces electrical and/or mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.
- (g) “Coincident Maximum Demand” means the maximum demand at the instant of greatest load of NAPOCOR.
- (h) “Department of Energy” or “DOE” refers to the government agency created pursuant to R.A. 7638 promulgated on 9 December 1992.
- (i) “Developmental Plans”, refers the Power Development Program or PDP formulated and updated yearly by the NAPOCOR and/or individual electric utilities.
- (j) “Distribution System”, means the electric system of an electric utility which delivers electricity from transformation points on the transmission system to the consumers or end-users.
- (k) “Electric Cooperative” shall mean a corporation under R.A. 6038 or P.D. 269, as amended by P.D. 1645, or a

cooperative supplying or empowered to supply electric service.

- (l) “Electric Energy”, as commonly used in the electric utility industry, means kilowatt-hours.
- (m) “Electric Utility System” refers to the distribution system of an electric cooperative, local-government-owned and privately-owned electric utility operating within the NAPOCOR and electric utility power grids.
- (n) “Electric Utility” refers to the electric cooperative, local-government-owned and privately-owned electric utility operating within the NAPOCOR grids or other electric systems.
- (o) “Energy Industry Administration Bureau” or “EIAB” refers to the Bureau under the DOE that shall, among others, assist in the formulation of regulatory policies to encourage and guide the operations or both government and private entities involved in energy resource supply activities including independent power production and electricity distribution.
- (p) “Energy Planning and Monitoring Bureau” or “EPMB” refers to the Bureau under the DOE that shall, among others, supervise, coordinate, and integrate the formulation, monitoring, and review of programs and plans for energy supply development such as power development, local energy resource development and production, and energy importation.
- (q) “Energy Regulatory Board” or “ERB” refers to the quasi-judicial agency created under Executive Order 172, dated 8 May 1987, which, among other functions, fixes and regulates the prices of petroleum products and the power rates of electric utilities, now including the NAPOCOR and the electric cooperatives, pursuant to Section 18 of R.A. 7638.
- (r) “Energy Resource Development Bureau” or “ERDB” refers to the Bureau under the DOE that shall, among others, assist in the formulation and implementation of policies to develop and increase the domestic supply of local energy resources like fossil fuels, nuclear fuels, hydropower and geothermal resources.
- (s) “Total Energy Input”, for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the total kilograms of fuel used multiplied by the Higher Heating Value (HHV) of the fuel input/s as received.
- (t) “Franchise Area” shall mean a geographical area franchised to a public service entity such as: electric cooperative, local government or privately-owned electric utility system.
- (u) “Grid” means the electrical system of interconnected transmission lines, substations and generating plants of NAPOCOR or the concerned electric utility, as the case may be.
- (v) “Host Utility” means the franchised electric utility operating nearest to where, or within whose area a qualified PSGF is located.
- (w) “Incremental PSG Power” means electricity supplied by NAPOCOR or an electric utility, regularly used by an owner of a qualified private sector generation facility in addition to that which the latter generates itself. It is the difference between the total electricity requirement of a private sector generator and the amount it generates.
- (x) “Interconnection” means the connection of a generating facility or a power distribution facility to an electric utility system or the NAPOCOR grid.
- (y) “Interconnection Costs” means the costs of all necessary interconnecting

electrical equipment, protective devices and control equipment needed by a private sector generator for its PSGF to permit interconnected operations with NAPOCOR or an electric utility.

(z) “Interruptible Power” means electricity supplied by NAPOCOR or an electric utility to private sector generator subject to interruption by the former.

(a.1) “Maintenance Power” means electricity supplied by NAPOCOR or an electric utility, to a private sector generator whose PSGF is undergoing scheduled maintenance work.

(b.1) “Mini-Hydro Facilities” means hydro facilities with capacities of 101 kilowatts to 10,000 kilowatts.

(c.1) “National Electrification Administration” or “NEA” means the corporation, wholly-owned or controlled by the government, created under the provisions of Presidential Decree No. 269, as amended, of 06 August 1973, and tasked primarily to administer the rural electrification program.

(d.1) “National Power Corporation” or “NAPOCOR” means the corporation, wholly-owned and controlled by the government, formed under the provisions of Republic Act No. 6395 of 10 September 1971 and tasked primarily to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.

(e.1) “Peak Demand” means the maximum integrated load demand occurring for thirty (30) minutes continuously.

(f.1) “Person” means any natural person, firm, association, corporation, business trust and partnership.

(g.1) “Primary Energy Source” means the fuel used for the generation of electricity, except that such terms do not include:

(1) The minimum amounts of fuel required for ignition, start up, testing, flame stabilization, and control uses, and

(2) The minimum amounts of fuel required to alleviate or prevent:

(i) unanticipated equipment outages, and

(ii) emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.

(h.1) “Private Sector Generation Facility, (PSGF)” means:

(1) any cogeneration facility meeting the minimum thermal efficiency standards set by the DOE for cogeneration systems, or

(2) any renewable resource power production facility, or

(3) any electric generating facility that shall use indigenous energy resources as its primary energy source, or

(4) any electric generating facility, particularly a Block Power Production Facility, intended primarily to sell all the bulk of its power output to the grid, consistent with the development plans formulated by NAPOCOR and/or electric utilities, and approved by the DOE.

(i.1) “Private Sector Generator” refers to the owner and/or operator of the accredited PSGF.

(j.1) "Purchase" means the purchase of electricity by NAPOCOR or an electric utility from a private sector generator.

(k.1) "Rate" means any price, tariff or charge, as classified by NAPOCOR or the electric utility with respect to sale or purchase and/or wheeling of electricity.

(l.1) "Renewable Energy Sources" means sources of energy that are regenerative or virtually inexhaustible such as biomass, solar, wind, geothermal or hydro, and also means by-product materials that, but for their use as a source of energy would be considered waste.

(m.1) "Renewable Resource Power Production Facility (RRPPF)" means a facility which produces electricity by the use of renewable energy resources as its primary energy source.

(n.1) "Sale" means the sale of electricity by NAPOCOR or an electric utility to a private sector generator.

(o.1) "Spinning Reserve" means generating capacity that is on-line and ready to take load, but in excess of the current load of the electric system.

(p.1) "System Emergency" means a condition on NAPOCOR's or an electric utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(q.1) "Thermal Efficiency", as it pertains to cogeneration facilities, is defined as the ratio of useful energy output to the total energy input.

(r.1) "Topping-cycle Cogeneration Facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power with

the reject heat recovered from power production then used to provide useful thermal energy.

(s.1) "Uncontrollable Forces" means any occurrence beyond the control of a party which causes that party to be unable to perform its obligations and which the party has been unable to overcome by the exercise of due diligence, including but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, action or inaction of legislature, judicial or regulatory agencies, or other proper authority affecting the operation of the PSGFs, failure or sabotage of facilities which have been maintained in accordance with good engineering and operating practices in the Philippines.

(t.1) "Useful Energy Output", for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the sum of electricity and/or mechanical power plus the useful heat in the steam or hot exhaust gases and such other thermal energy recovered for useful purposes.

(u.1) "Wheeling" means the provision of electric energy transmission services by NAPOCOR or an electric utility for the purpose of enabling the owner of an accredited PSGF to transmit power to another system or end-user.

## ARTICLE II

### JURISDICTION OF THE DOE, NAPOCOR, NEA AND ERB

SECTION 1. *Jurisdiction of the DOE.* – The DOE shall have overall jurisdiction in the accreditation of qualified Private Sector Generating Facilities (PSGFs). As part of its rule-making powers granted under R.A. 7638, the DOE shall have the authority to amend

these Rules and Regulations as may be necessary if the common good so requires, as determined upon public hearing to ascertain the nature of the exigency or cause requiring the introduction of amendments. Pursuant to Section 12 (c) of R.A. 7638, the review, evaluation, and accreditation of qualified private sector proposals shall be undertaken by the EIAB of the DOE, based on the procedures and criteria for accreditation set forth in these Rules and Regulations.

The Director of the EIAB shall have the authority to issue Certificates of Accreditation, as well as denials of requests for accreditations, as the case may be, for and in behalf of the DOE. Decisions of the EIAB as regards applications for accreditations as a qualified PSGF are appealable within a period of thirty (30) days to the Secretary of the DOE, who in turn must decide on the case within sixty (60) days after receipt of the appeal.

**SEC. 2. *Jurisdiction of NAPOCOR.*** – NAPOCOR shall have responsibility for the formulation and implementation of such programs as are necessary to ensure the reliability of electricity throughout the country’s power grids, consistent with the general and specific policies adopted by the DOE. In this regard, NAPOCOR may undertake required generation and transmission projects through private sector participation, subject to the provisions of these Rules and Regulations, and supplemented by Republic Act No. 6957 (“An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and For Other Purposes”), the amendments thereto, and its implementing guidelines. Pursuant to NAPOCOR’s functions as a bulk power generation and transmission utility, high-voltage wheeling of electricity generated by qualified PSGFs to the concerned electric utility or end-user shall be provided by NAPOCOR, where necessary.

The DOE shall require NAPOCOR and individual electric utilities to submit power development

programs which reflect an efficient portfolio of generation and demand-side resources, for the DOE’s review and approval, indicating projects to be undertaken through private sector participation, the justifications for such, and indicative timetables for undertaking competitive procurement of each of the listed projects.

NAPOCOR and/or individual electric utilities shall seek the DOE’s prior approval to implement generation projects not included in the approved power development plans of the respective electric utilities.

**SEC. 3. *Jurisdiction of the NEA.*** – Pursuant to the NEA’s role as a developmental and financial institution to electric cooperatives, the NEA shall make appropriate recommendations to the DOE regarding applications of electric cooperatives to build and operate power generation facilities for self-generation, as defined and allowed in the relevant provisions of Part IV of these Rules and Regulations, or applications of electric cooperatives for authority to contact their power supply requirements with PSGFs, consistent with the provisions of Part III of these Rules and Regulations.

Such endorsement by the NEA shall consider the impact of an electric cooperative’s power generation proposal on the latter’s ability to render efficient and reliable service to its existing customers, to expand its service coverage to non-electrified areas, and to continue its debt service to the NEA. In endorsing a cooperative’s application, the NEA shall make no representation as to the overall viability of the cooperative’s operations.

**SEC. 4. *Jurisdiction of the ERB.*** – The ERB shall have jurisdiction over the implementation of regulations concerning power rates of investor-owned electric distribution utilities, electric cooperatives, and NAPOCOR. Such authority shall include the review and approval of tariff schedules for wheeling, back-up and maintenance power, incremental PSG



power, and reserve capacities carrying fees, as well as the review and approval of power purchase agreements of NAPOCOR and other franchised electric utilities between qualified PSGFs with respect to the reasonableness of power purchase rates and their corresponding impacts on electric utilities' rates of return, as well as on end-user tariffs.

The ERB shall hear and arbitrate disputes between and/or among franchised electric utilities, NAPOCOR, and qualified PSGFs on matters which have implications on rates of NAPOCOR and/or electric utilities.

### ARTICLE III

#### QUALIFICATIONS OF A PRIVATE SECTOR GENERATION FACILITY AND A PRIVATE SECTOR GENERATOR

SECTION 1. *Ownership.* – Qualifications as to ownership of a PSGF shall be any of the following:

- (a) A PSGF may be constructed, owned and operated by private persons, private corporations, cooperatives or other similar associations not primarily engaged in the transmission and/or distribution of electricity, and shall be governed by applicable Philippine Laws on corporations or similar associations as to registration, independent auditing, taxation and other related matters as provided by said laws. Foreign entities may participate in electricity generation subject to applicable Philippine laws.
- (b) Private corporations, cooperatives and similar associations primarily engaged in the transmission and/or distribution of electricity, referred to in these Rules and Regulations as electric utilities, may own, construct and operate generating facilities, subject to electric utility regulations concerning rates, financial limitations, taxes and other laws applicable to their operations as electric utilities, and subject to the specific

provisions of Part IV for “Electric Utility-Owned Generation Facilities”.

- (c) Companies or consortium of companies, whether private or government-owned, primarily engaged in indigenous energy upstream exploration, development and production activities, may own, construct and operate generation facilities to the extent that the primary energy source in power generation shall come from the local production of such companies or consortiums of companies, and subject to limitations provided by relevant legislations, regulations, and/or service contract terms of the DOE, and the specific provisions on Block Power Production Facilities (BPPFs), where applicable.

Majority interest of NAPOCOR and/or any other electric utility on the equity of a PSGF shall be considered as ownership by an electric utility, and shall, thus, be subject to applicable utility regulations. A PSGF in which NAPOCOR and/or any other utility has minority interest, and in which the majority interest is being held by non-utility companies shall be governed by applicable laws other than for electric utilities.

For entities availing of incentives offered under the government's annual Investment Priorities Plan, such entities shall be guided by relevant legislation thereto.

SEC. 2. *Technical and Financial Qualifications.* – Private Sector Generators, more particularly private corporations, cooperatives, and similar associations seeking to construct, own, and operate power generation facilities under these Rules and Regulations, must possess the technical capability (i.e., engineering and management qualifications) and a proven track record in the field of power generation, particularly in the generation technology being proposed. A Private Sector Generator must likewise demonstrate the financial strength and capability to undertake the scale

of project being proposed under these Rules and Regulations.

SEC. 3. *Facility Classification.* – A PSGF referred to in this Part of these Rules and Regulations shall include the following electric generating plants:

- (a) Electric generating facilities intended primarily to sell all the bulk of its power production to the grid (i.e., to NAPOCOR or to other electric utilities), consistent with the developmental plans formulated by NAPOCOR and/or electric utilities and approved by the DOE;
- (b) Cogeneration facilities such as topping- or bottoming-cycle facilities, utilizing fossil fuels or a blend of fossil fuels and renewable energy forms, meeting engineering, operating and efficiency standards as prescribed in Section 5 of this Article;
- (c) Renewable Resource Power Production Facilities such as those using biomass, solar, wind, geothermal, hydro or wastes as the primary source of energy; and
- (d) Electric generating facilities that shall use indigenous energy resources as their primary fuels.

SEC. 4. *Size of Generating Units.* – The maximum size of a generating unit of a PSGF shall be limited to the existing largest generating unit size or 10% of the coincident maximum demand of the concerned NAPOCOR grid or as allowed by DOE. For areas not covered by the main transmission networks of NAPOCOR, the size of generating units shall be limited by the power demand in the concerned isolated area, island or grid, taking into account reasonable projections of load growth over the period of PSGF commissioning.

SEC. 5. *Engineering, Operating and Efficiency Standards.* – A PSGF shall be guided by

internationally-accepted standards in engineering, operations and reliability. Cogeneration facilities utilizing fossil fuels, or a blend of fossil and renewable energy sources, shall be required to meet the minimum thermal efficiency standard set forth in Part II of these Rules and Regulations, for purposes of availing incentives offered under the Investment Priorities Plan of the Board of Investments and/or securing a DOE accreditation as a qualified Cogeneration facility under these Rules and Regulations.

SEC. 6. *Economic Criteria.* – Any proposed electric generating facility should be able to demonstrate its potential for providing net foreign exchange savings to the country, by virtue of:

- (a) generating electric energy more efficiently or cheaper than can otherwise be generated by existing or programmed generation facilities under the power development plans of NAPOCOR and/or other electric utilities;
- (b) using indigenous and/or renewable energy sources; and
- (c) accessing lower costs of capital, cheaper plant investment, and/or locally manufactured equipment..

#### ARTICLE IV

##### GENERAL PROCEDURES FOR APPLYING FOR ACCREDITATION AS A PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Contents of Application.* – The contents of application for accreditation as a qualified PSGF should generally contain the following information:

- (a) Name and address of the applicant and location of the proposed facility;
- (b) Project organizational setup;
- (c) Names of cooperating/participating companies, equity participation,

incorporation documents, audited financial statements for the last two fiscal years, and records of successful experience in similar activities in the last five (5) years;

- (d) Project financing plans;
- (e) Administrative and technical manpower complement;
- (f) Facility classification and general plant description
- (g) Sale of PSGF generation (whether generation is solely for sale to the grid, dedicated to an electric utility, or for internal use with provision for sale of excess power to the grid);
- (h) Projected mode of operation (baseload or peaking);
- (i) Power and annual energy production capacity in (kW and kWh, respectively) of the proposed facility;
- (j) Primary energy source (fuel) of the facility, heating value, and net plant heat rate;
- (k) Projected forced outage rate, maintenance days, dependable capacity, and station energy use;
- (l) Projected economic life of project and proposed duration of interconnection/cooperation period;
- (m) Interconnection plans with NAPOCOR or other electric utility;
- (n) Detailed project timetable, including target periods for financial closing, groundbreaking, installation of major plant equipment, testing and commissioning of the facility;
- (o) Any other information as may be required under the specific provisions of Parts II, III

and IV, or as may be deemed necessary by the EIAB for evaluation purposes.

*SEC. 2. Facilities Qualified for Accreditation.* – A Private Sector Generation Facility (PSGF) which meets the qualifications for accreditation set forth in Sections 1 through 6 of Article III is a qualified PSGF.

*SEC. 3. Accreditation by the EIAB.* – The owner or operator of a proposed PSGF intending to sell all or its excess power production to the grid, and whether the facility is existing or shall be constructed, and whose generating unit is subject to the limitations under Article III hereof, shall apply for accreditation as a qualified PSGF to the EIAB.

*Provided,* That all the information requirements shall have been complied with, the EIAB shall approve or deny any application for accreditation as a qualified PSGF, based on the foregoing qualifications for accreditation in Article III, within two (2) months from the date of application, unless EIAB shall have required the submission of additional information, or postponement of final action on an application for reasonable grounds.

Any order postponing final action on application shall state specifically the grounds for postponement, and the date on which a final ruling shall be issued.

The EIAB shall issue Certificates of Accreditation to PSGFs which are found to have qualified under these Rules and Regulations.

*SEC. 4. EIAB Issuance of Provisional Accreditations.* – The EIAB may issue provisional accreditations to PSGFs qualifying under Sections 1, 3, 4, 5 and 6 of Article III of this Part of the Rules and Regulations if the Private Sector Generator is able to demonstrate in its formal application sound, reasonable, and time bound development plans, consistent with overall timetables for project commissioning, for the formation

of a technically and financially qualified consortium or collaborative of corporations to undertake the proposed PSGF.

In all cases, notwithstanding compliance with Sections 1 through 6 of Article III, the EIAB may impose the time-bound achievement of specific project milestones with the end in view of ensuring the timely of the timely completion of the proposed facility, as well as for monitoring the progress of the provisionally-accredited PSGF.

Provisional accreditations issued by EIAB shall have a maximum validity period of one (1) year. The EIAB may decide on the extension or non-extension of the provisional accreditation on the basis of progress made by the proponent towards complying with the conditions of the provisional accreditation, ensuring timely completion of the project, and EIAB's evaluation of the continued viability of the proposed generation project.

*SEC. 5. Non-transferability of Accreditation.* – Accreditation issued by the EIAB shall not be transferable or assignable except to subsidiaries, affiliated companies and/or partners, determined to be technically and financially-qualified by the EIAB, of the originally-accredited owners/proponents of the qualified PSGFs.

Transferability of accreditation issued to electric utilities shall be governed by the relevant provisions of Part IV on “Electric Utility-Owned Generation Facilities”.

*SEC. 6. Representation During Accreditation and Negotiation.* – Where proposals for PSGFs are submitted by persons or entities, foreign or local, other than the organization which is or will be set up to construct, own and operate the facilities, agreement made during any negotiation after accreditation shall not legally bind parties involved thereto until such time when a contract for the sale of power is agreed upon and signed. Preparation of such contract between NAPOCOR or the electric

utility and the organization, existing or newly created, owning the PSGF shall be based on documentary support such as Letters of Intent and Memorandum of Agreement made and signed during any negotiation.

*SEC. 7. Action on Modification of a PSGF.* – Prior to undertaking any substantial alteration or modification of a PSGF which has been certified under these Rules and Regulations, the owner or operator of such qualified PSGF shall apply to the EIAB for a ruling that the proposed alteration would not result in a revocation of the facility's qualified status. The term “substantial alteration or modification of a qualified PSGF” means such alteration, modification or other changes as will materially affect the accuracy of the information submitted pursuant to Article III and Section 1 of this Article under this Part of the Rules and Regulations.

*SEC. 8. Revocation of Qualified Status.* – The EIAB may revoke the qualified status of a PSGF which has been accredited under this Article if such facility fails to comply with the requirements of these Rules and Regulations, or any of the conditions contained in the Certificate of Accreditation, whether provisional or not, issued by the EIAB. The EIAB shall advise relevant parties of its decision to revoke the qualified status of a PSGF, citing the reasons for such revocation.

*SEC. 9. EIAB Monitoring of Accredited PSGFs.* – Owners/proponents of accredited PSGFs shall submit quarterly status reports on the progress of each accredited project to the EIAB, and shall immediately inform the EIAB of any substantial changes in the project that may have an impact on the PSGF's qualified status. The PSGF shall likewise urgently advise the EIAB on the attainment of project milestones (e.g., site groundbreaking, issuance of environmental clearances and other permits, financial closing, etc.) for monitoring purposes.

The EIAB shall render quarterly reports to the DOE Secretary on the progress of accredited

projects. Copies of these reports shall be regularly furnished to concerned bureaus and agencies of the DOE for information and coordination.

SEC. 10. *Generation by Cogeneration and Renewable Resource Power Production Facilities (RRPPFs).* – Proponents/owners of Cogeneration and Renewable Resource Power Production Facilities (RRPPFs) shall be further guided by the specific provisions under Part II of these Rules and Regulations.

SEC. 11. *Generation by Block Power Production Facilities (BPPFs).* – Generation projects under any power development plan approved by the DOE, more particularly referred to as Block Power Production Facilities (BPPFs), shall be further guided by the specific provisions under Part III of these Rules and Regulations.

SEC. 12. *Generation by Companies or Consortiums Primarily Engaged in Energy Upstream Operations.* – Construction and operation of PSGFs by energy upstream companies or consortiums shall be further guided by the relevant provisions of Part II or Part III of these Rules and Regulations, as applicable.

SEC. 13. *Generation by Electric Utilities.* – PSGFs owned by electric utilities whose facilities are intended for self-generation shall be further guided by the specific provisions under Part IV of these Rules and Regulations.

SEC. 14. *Generation by Non-utilities Primarily for Internal Use.* – A non-utility PSGF whose generation is solely for the owner's internal use need not apply for accreditation with the EIAB, but shall inform the EIAB in writing of its power generation plans. If in the future there is a likelihood that sale to NAPOCOR or electric utilities would occur, the PSGF shall apply for accreditation with the EIAB following the provisions of these Rules and Regulations.

## ARTICLE V

### RIGHTS OF NAPOCOR AND THE CONCERNED ELECTRIC UTILITY ON THE DESIGN AND OPERATION OF THE PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Right to Review.* – NAPOCOR and/or the concerned electric utility shall have the right to review the design of the qualified PSGF and its interconnection and fuel storage facilities. Any flaws perceived by NAPOCOR and/or the concerned electric utility in the design of the PSGF shall be described and communicated in writing to the owner of the PSGF, with a copy furnished to the EIAB. Internationally-accepted engineering standards shall be utilized as reference in this review process.

SEC. 2. *Right to Monitor.* – NAPOCOR and/or the concerned electric utility shall have the right to monitor the construction work and construction schedule, start-up, operation and maintenance, and fuel inventory practices of the PSGF, and shall have the right to consult with and make recommendations to the owner of the PSGF.

## ARTICLE VI

### OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF QUALIFIED PRIVATE SECTOR GENERATION FACILITIES

SECTION I. *Interconnection of Accredited PSGFs.* – NAPOCOR and franchised electric utilities with transmission and/or distribution facilities of 69 KV or above shall file with the ERB standard interconnection policies and procedures, and wheeling tariffs for the ERB's approval.

NAPOCOR, privately-owned electric utilities, and electric cooperatives connecting with a PSGF shall submit to the ERB a copy of any interconnection agreement for its review and approval, in line with ERB's rate-setting function. The interconnection agreement shall include the agreements reached on matters pertaining to rates of purchase and

sales, operating and maintenance schedules, procedures for dispatch, protective and metering devices and other items that are important to both parties. Copies of such interconnection agreements shall be submitted to the EIAB for monitoring purposes.

SEC. 2. *Transmission to Electric Utilities (Wheeling).* – Wheeling of power shall be guided by standard interconnection policies, procedures, and tariffs submitted to and approved by the ERB. Wheeling rates, charges, terms, and conditions shall permit the recovery by such utility of all the costs incurred in connection with the transmission and necessary associated services, and the costs of any required expansion of transmission facilities. The appropriate share, if any, of legitimate, verifiable, economic costs associated with the provision of transmission services may be included in these charges, while taking into account any benefits of providing such services to the transmission system.

Such rates, charges, terms, and conditions should promote the economic and efficient transmission and generation of electricity, and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided shall ensure that, to the extent possible, costs incurred in providing wholesale transmission services, as well as property allocated to the provision of such services, are recovered from the concerned PSGF, and not from a transmitting utility's existing wholesale, retail, and transmission customers. Utility regulations concerning rates, financial limitations, and taxes shall apply to wheeling tariffs of NAPOCOR and other electric utilities.

SEC. 3. *Provision on Spinning Reserve.* – The owner of the PSGF shall maintain a continuous spinning reserve at all times to the extent possible and under terms to be agreed upon with NAPOCOR or the concerned electric utility.

SEC. 4. *Safety Requirements.* – The owner of the PSGF shall provide and install protective devices in their facilities as a safeguard from any NAPOCOR or electric utility system disturbances.

SEC. 5. *Periodic Reporting to the EIAB and the Concerned Electric Utility.* – The owner of the PSGF shall regularly submit to the concerned electric utility and the EIAB in a prescribed form, operating, and other information as may be required by the utility and the EIAB for monitoring and planning purposes. The EIAB shall furnish copies of such reports to other relevant units and line agencies of the DOE.

## ARTICLE VII PURCHASE OF POWER

SECTION 1. *General Provision.* – NAPOCOR and/or the concerned electric utilities shall purchase that power (electric energy and/or capacity) needed to serve its anticipated demand (including reasonable reserve requirements) at rates that shall not be more than their “avoided cost”. “Avoided cost” as herein defined shall mean the least incremental cost that an electric utility would incur towards meeting its anticipated power demand, if such utility does not buy power from a PSGF.

SEC. 2. *Purchase Rates Qualification.* – Rates for purchase shall:

- (a) Be just and reasonable to the electric customers of NAPOCOR and/or other concerned electric utilities, and in the public interest; and
- (b) Be in accordance with guidelines set by the EIAB on this matter where full and/or excess energy production shall be sold to the systems of concerned electric utilities. An acceptable competitive procurement scheme (e.g., bidding) is one means of setting avoided cost as well as reasonable purchase rates.

SEC. 3. *Adjustments in Financial Accounting.* – NAPOCOR and the concerned electric utilities shall accordingly adjust their financial accounting systems and procedures resulting from purchases of electricity from private sector generators. The rate of return on rate base levels shall then be determined after all adjustments have been made and set in place.

SEC. 4. *Determination of Avoided Cost.* – The EIAB, in coordination with the ERB and in consultation with NAPOCOR, electric utilities and other relevant private sector entities, shall formulate and adopt a standard methodology for the calculation of NAPOCOR’s and electric utilities’ avoided costs. Criteria for competitive procurement schemes (e.g., bidding) shall also be formulated to define acceptable means of solicitation that can also provide the basis for determining an electric utility’s avoided costs and reasonable purchase rates. Said methodology and criteria shall be formulated by the EIAB within three (3) months from the effectivity of these Rules and Regulations, and disseminated to relevant agencies, including ERB, NAPOCOR, and concerned electric utilities for information and immediate adoption.

The EIAB, to the extent possible, shall take into account the following factors in its formulation of a standard methodology for the calculation of avoided cost:

- (a) The structure of the incremental costs that would have been incurred by NAPOCOR and/or other electric utilities had they built the required generation facilities and/or generated electric power themselves to serve its anticipated demand (including reasonable reserve requirements);
- (b) The availability of capacity and energy from a qualified PSGF during the system daily and seasonal peak periods, including, but not limited to:

- (1) The ability of the NAPOCOR or the concerned electric utility to dispatch the qualified PSGF;
- (2) The expected or demonstrated reliability of the qualified PSGF, and the corresponding value of reserve capacity required to be carried by NAPOCOR and/or other electric utilities;
- (3) The extent to which scheduled outages of the qualified PSGF can be usefully coordinated with scheduled outages of the NAPOCOR or the electric utility’s facilities;
- (4) The individual and aggregate value of energy and capacity from qualified PSGFs on NAPOCOR’s or the electric utility’s system;
- (c) The ability of NAPOCOR or the affected electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use;
- (d) The costs of saving resulting from variations in line losses from those that would have existed in the absence of purchases from a qualified PSGF; and
- (e) The costs of environmental mitigation measures necessary to ensure compliance with regulations and standards on environmental management. For purposes of promoting the economic utilization of specific indigenous and renewable energy forms, the DOE may, in line with its rule-making powers, fix power purchase rates for electricity generated from such resources after due consultation with relevant private and government entities.

**ARTICLE VIII**  
**RATES FOR SALES**

SECTION 1. *General Rules.* – NAPOCOR or any concerned electric utility shall sell to

any owner of a qualified PSGF electricity requested by the latter. Except for backup power, rates for sales of NAPOCOR and/or the concerned electric utility to the qualified PSGF shall be based on the net interchange of energy between the said qualified PSGF and NAPOCOR or the concerned electric utility. If said interchange of energy results in requiring the PSGF to pay for electricity used, the applicable rates in this case shall be the rates stipulated in a contract between the qualified PSGF and NAPOCOR or the concerned electric utility.

SEC. 2. *Services to be Provided to any Qualified PSGF.* – As contracted with the owner of a qualified PSGF, NAPOCOR or the concerned electric utility shall provide:

- (1) Incremental PSG power;
- (2) Back-up power;
- (3) Maintenance power; and
- (4) Interruptible power.

SEC. 3. *Rates for Back-up and Maintenance Power.* – NAPOCOR and the individual electric utilities shall submit to the ERB, for the latter’s review and approval, rates for sales of back-up and/or maintenance power to qualified PSGFs.

**ARTICLE IX**  
OPERATING STANDARDS,  
ENVIRONMENTAL CONCERNS  
AND OTHER MATTERS

SECTION 1. *Standards for Operations and Reliability.* – Qualified PSGFs, NAPOCOR, and other electric utilities shall follow established internationally-accepted engineering standards to ensure safety, system security, and reliability for interconnected system operations. NAPOCOR and the concerned electric utilities shall have the right to physically inspect the power installations and witness the testing and commissioning of the PSGF that will be interconnected to its system to ensure that all necessary equipment are in

place and functioning properly.

SEC. 2. *Operating Structure.* – The qualified PSGF directly connected to the NAPOCOR grid shall be operated by its owner in accordance with the terms of the interconnection agreement with NAPOCOR and/or the concerned electric utility with respect to the wheeling and/or purchase of electricity generated by said PSGF.

SEC. 3. *Environmental Concerns.* – Qualified PSGFs shall meet standards on environmental management, including, among others, those on air quality, noise levels, water quality, solid waste, emission balances and controls, land use and aesthetics as required by law through appropriate government agencies.

SEC. 4. *Content of Contract.* – Consistent with these Rules and Regulations, all contracts between the owners of PSGFs, and NAPOCOR or the concerned electric utility shall include, among others, the following:

- (a) Identification of Parties;
- (b) Recitals (rationale of contract);
- (c) Considerations (general agreements);
- (d) Purchase and Sale (stipulation of power purchase and sale);
- (e) Conditions of Delivery:
  - (1) Point of Delivery
  - (2) Character of Service ((technical specifications for expected power output)
  - (3) Power Factor
  - (4) Continuity/reliability
- (f) Rates for Purchase from Facility and Adjustment clauses;



- (g) Rates for Sale to Facility and Adjustment clauses;
- (h) Billing Periods and Payment Terms;
- (i) Penalty and Discount Clauses;
- (j) Rights and Obligations of NAPOCOR/ Electric Utility and PSGF as to:
  - (1) Ownership, Design, Operation and Maintenance
  - (2) Construction Requirements
  - (3) Plans and Specifications
  - (4) Inspection and Tests
  - (5) Change of Equipment
  - (6) Costs
  - (7) Control and Protective Apparatus
  - (8) Location
  - (9) Deliveries and Amount of Production
  - (10) Notices
  - (11) Land Rights
  - (12) Regulatory Approvals
  - (13) Codes and Standards
  - (14) Removal of Equipment
  - (15) Provisions for Contract Violation
- (k) Operations;
  - (1) Date of Operation
  - (2) Operating Procedure
  - (3) Sell-back Conditions
- (l) Safety Requirements;
- (m) Force Majeure;
- (n) Meter Provisions and Metering Arrangements;
- (o) Right to Access for Inspection, etc.;

- (p) Liability of Each Party with Respect to Operations;
- (q) Duration of Contract and Conditions for Contract Cancellation;
- (r) Provision for Security; and
- (s) Additional Provisions.

SEC. 5. *Force Majeure.* – Neither party to a contract shall be in default if failure of performance of the terms of the contract is caused by factors due to acts of God, nature, or uncontrollable forces.

**PART II  
SPECIFIC PROVISIONS FOR COGENERATION  
AND RENEWABLE RESOURCE POWER  
PRODUCTION FACILITIES**

In addition to the provisions of Part I of these Rules and Regulations, the following Articles shall guide proponents/owners of Cogeneration or Renewable Resource Power Production Facilities (RRPPFs).

**ARTICLE I  
DEFINITIONS OF COGENERATION  
AND RENEWABLE RESOURCE POWER  
PRODUCTION FACILITIES**

SECTION 1. *Definition of Cogeneration Facilities.* – Cogeneration facilities, as defined in these Rules and Regulations, means a facility which produces electrical and/or mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. A cogeneration facility may either be a topping-cycle or bottoming-cycle facility.

A topping-cycle cogeneration facility means a cogeneration facility in which the energy input to the facility is first used to produce useful power with the reject heat recovered from power production then used to provide useful thermal energy, while a bottoming-

cycle facility refers to a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.

SEC. 2. *Definition of Renewable Resource Power Production Facilities (RRPPFs).* – RRPPFs, as defined in these Rules and Regulations, refers to any facility which produces electricity by the use of renewable energy resources as its primary energy source. Renewable energy sources means sources of energy that regenerative or virtually inexhaustible such as biomass, solar, wind, geothermal or hydro, and also means byproduct materials that, but for their use as a source of energy, would be considered waste.

Primary energy source, on the other hand, means the fuel/s used for the generation of electricity, except that such terms do not include:

- (a) The minimum amounts of fuel required for ignition, start up, testing, flame stabilization and control uses, and
- (b) The minimum amounts of fuel required to alleviate or prevent:
  - (i) unanticipated equipment outages, and
  - (ii) emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.

## ARTICLE II

### QUALIFICATIONS OF RRPPFs AND COGENERATION FACILITIES

SECTION I. *Accreditation of RRPPFs and Cogeneration Facilities.* – An RRPPF meeting the general qualifications under Article III of Part I of these Rules and Regulations is a qualified PSGF. A cogeneration facility

is a qualified PSGF under these Rules and Regulations if it meets the general qualifications under Article III of Part I, and the thermal efficiency standard for cogeneration projects, as defined in Section 2 of this Article.

SEC. 2. *Thermal Efficiency Standards for Cogeneration Facilities.* – In addition to the general qualifications for accreditation under Article III of Part I of these Rules and Regulations, cogeneration facilities should be able to achieve a minimum thermal efficiency of sixty (60) percent for purposes of availing incentives offered under the Investment Priorities Plan of the Board of Investments and/or securing accreditation from the EIAB as a qualified PSGF. The DOE shall review the applicability of such thermal efficiency standard for cogeneration from time to time, considering the viability of efficiency advances in generation technologies, boilers, and heat recovery systems.

Thermal efficiency, as herein defined, means the ratio of useful energy output to the total energy input, calculated on an annual basis.

Useful energy output, for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the sum of electricity and/or mechanical power plus the useful heat in the steam or hot exhaust gases, and such other thermal energy recovered for useful purposes.

Total energy input, on the other hand, is defined as the total kilograms of fuel used multiplied by the Higher Heating Value (HHV) of the fuel input/s as received.

SEC. 3. *Cogeneration Facilities Utilizing Renewable Energy Sources.* – Cogeneration facilities utilizing renewable energy forms as its primary energy source shall be classified as Renewable Resource Cogeneration Facilities for purposes of accreditation as qualified PSGFs. Cogeneration facilities utilizing renewable energy sources and fossil fuels, either through a blend, combination, or

alternating use of such fuels, shall be treated and evaluated as Cogeneration Facilities. By virtue of this distinction, Renewable Resource Cogeneration Facilities shall not be subject to minimum thermal efficiency standards required for cogeneration facilities under Section 2 of this Article.

**SEC. 4. *Ownership of Cogeneration Facilities.*** – Any private corporation, cooperative, or similar associations requiring thermal and electric energy for industrial, commercial, heating, or cooling purposes (thermal host) may own and operate cogeneration facilities intended to supply their internal requirements for thermal and electric energy, and to sell any excess power generation to the grid.

Private corporations, cooperatives, or similar associations, other than the thermal hosts described above, shall be allowed to own and operate cogeneration facilities, and to sell electric and thermal energy directly to the concerned thermal hosts, as well as to sell any excess power generation to the grid, under exclusive contracts with the thermal host and/or concerned electric utility, and subject to the provisions and limitations of the *Public Service Law*.

### **ARTICLE III**

#### **PROCEDURES FOR APPLYING FOR ACCREDITATION AS A COGENERATION OR RENEWABLE RESOURCE POWER PRODUCTION FACILITY**

**SECTION 1. *Period of Processing.*** – All Cogeneration and RRPPFs intending to sell the excess or all its power production to NAPOCOR or any electric utility and/or thermal host shall apply for accreditation with the EIAB. Provided all requirements shall have been complied with, the EIAB shall approve or deny any application for accreditation for qualified PSGF status within one (1) month from the date of the application, unless the EIAB shall have required the submission of additional information, or ordered the postponement of

final action on an application for reasonable grounds.

**SEC. 2. *Accreditation of Mini-Hydro Projects.*** – Applications concerning the construction and operation of mini-hydro facilities shall be governed by the implementing rules and regulations of Republic Act No. 7156 (*Mini-Hydro Act of 1991*), promulgated by the Office of Energy Affairs in August 1992. Such applications shall be referred by the EIAB to the Energy Resource Development Bureau (EBDB) of the DOE.

Evaluation and processing of such applications shall be undertaken by the Mini-Hydro Division of the ERDB. The ERDB shall inform the proponents and the EIAB of its decision to issue or deny a license to construct and operate mini-hydro facilities within a period of four (4) months, provided all information requirements to process the application have been submitted to the Mini-Hydro Division. The EIAB shall thereafter prepare and issue the appropriate accreditation certificates for mini-hydro projects approved by the ERDB.

**SEC. 3. *Accreditation of Waste-to-Energy Facilities.*** – Prior to filing an application with the EIAB for accreditation as a qualified PSGF under these Rules and Regulations, RRPPFs utilizing fuels derived from municipal solid wastes, or by-product materials that, but for their use as a source of energy, would be considered waste, shall first seek an endorsement from the appropriate government authority (i.e., the Presidential Task Force on Solid Waste Management, the Department of Environment and Natural Resources) certifying that the proposed Waste-to-Energy facility is consistent with the overall country framework for solid waste management. Such requirement may be waived by the EIAB for agricultural and industrial wastes not generally classified as municipal solid wastes.

Notwithstanding any endorsement or certification from the appropriate

government authorities on environmental/waste management, qualified Waste-to-Energy facilities shall meet standards on environmental management in accordance with the provision of Section 3, Article IX, Part I of these Rules and Regulations.

SEC. 4. *Contents of Applications for Cogeneration Facilities.* – In addition to the general information requirements listed in Section 1, Article IV, Part I of these Rules and Regulations, applications for accreditation as a qualified Cogeneration Facility shall contain the following information:

- (a) Minimum, maximum, and average volumes of steam and/or thermal energy required for industrial, commercial, heating or cooling purposes, on a monthly and annual basis, together with the required temperatures, pressures, and conditions of such volumes;
- (b) Minimum, maximum, and average requirements of power and electric energy on a monthly and annual basis;
- (c) A description of the basic industrial, commercial, heating, or cooling processes requiring any amounts of thermal and/or electric energy;
- (d) Single-line mass-balance and energy flow diagrams indicating volumes and conditions of exhaust gases, steam, heat, and electric energy produced and utilized at various points of the cogeneration cycle;
- (e) Detailed calculation of the overall thermal efficiency of the cogeneration system, including assumptions used for ambient temperature, fuel heating values, and other parameters; and
- (f) Other information that may be required by the EIAB in evaluating a cogeneration proposal.

SEC. 5. *Contents of Applications for RRPPFs.* – In addition to the general information requirements listed in Section 1, Article IV, Part I of these Rules and Regulations, applications for accreditation as a qualified RRPPF shall include detailed information on fuel supply, collection, and delivery systems in the form of a feasibility or pre-feasibility study. The EIAB may require the submission of any other information that may be necessary for the exhaustive evaluation of RRPPF proposals.

#### ARTICLE IV

##### OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF QUALIFIED RRPPFs AND COGENERATION FACILITIES

SECTION 1. *Purchase of Electric Energy from Qualified RRPPFs and Cogeneration.* –For facilities whose power production is also intended for sale to the grid, the qualified RRPPF or Cogeneration shall apply and negotiate for the sale of its power with the franchised electric utility within whose area said facility is located (host utility).

If sale is hindered by any disagreement, the owner of the facility may negotiate with NAPOCOR or any other electric utility for the latter to purchase its generation. If after further negotiation NAPOCOR or the concerned electric utility shall not purchase the generation, the owner of the RRPPF or Cogeneration shall apply to the EIAB for a ruling that said facility shall sell to NAPOCOR.

SEC. 2. *Interconnection and Transmission (Wheeling).* – The host utility shall be obligated to interconnect the qualified RRPPF or Cogeneration facility and wheel the electricity generated to a third party (electric utility or end-user) through the former's transmission and/or distribution lines of 69 KV or higher. The rate for purchase by the third party (electric utility or end-user) to which such electricity is transmitted shall be accordingly adjusted to reflect line losses and the corresponding wheeling charges of the

host utility.

SEC. 3. *Interconnection Costs.* – Upon effectivity of an agreement for interconnection by the owner of the qualified RRPPFs or Cogeneration facilities and NAPOCOR or the concerned electric utility, NAPOCOR or the electric utility may issue an order requiring the owner of said RRPPF or Cogeneration facility to advance investments for the necessary interconnecting electrical equipment and devices in accordance with appropriate electrical plans approved by NAPOCOR and/or the concerned electric utility. Repayment for the investment on these facilities shall be done following arrangements mutually agreed upon by contracting parties. Maintenance costs for the interconnection facilities shall be borne by the concerned electric utility.

For RRPPFs and cogeneration facilities with capacities of less than 10,000 kilowatts, however, NAPOCOR or the concerned electric utility shall shoulder all costs needed for the realization of the physical connection of the PSGF to the former's transmission facilities. Maintenance costs for the interconnection facilities shall also be borne by NAPOCOR or the concerned electric utility.

SEC. 4. *System Emergencies.* – RRPPFs and cogeneration facilities shall be obligated to provide power to NAPOCOR or the concerned electric utility during system emergencies to the extent provided under their agreement.

## **ARTICLE V RATES FOR PURCHASES**

SECTION 1. *Rate Satisfaction.* – Rates for purchases from qualified RRPPFs or Cogeneration facilities must satisfy the requirements set forth under Sections 2 and 4 of Article VII, Part I of these Rules and Regulations. In the case in which the rates for purchases are based upon estimates of NAPOCOR and/or the concerned electric utility's "avoided cost" over the specific period of a contract, the rates for such purchases do

not violate this Article if these rates differ from NAPOCOR's or the concerned electric utility's "avoided cost" at the time of delivery.

SEC. 2. *Purchases "as available".* – The rates for purchases of energy and capacity on an "as available" basis shall be based on NAPOCOR's and/or the purchasing electric utility's costs calculated *at the time of delivery* and stipulated in a contract to purchase. Energy and capacity on an "as available" basis shall mean electricity supplied by RRPPFs or Cogeneration facilities to NAPOCOR and/or an electric utility following a schedule provided by the RRPPF or Cogeneration owner as to time and period and agreed to by NAPOCOR or concerned electric utility.

SEC. 3. *Rates for Purchases of Power Generated by RRPPFs and Cogeneration Facilities with Capacities of less than 10,000 kilowatts.* – NAPOCOR shall formulate and adopt, subject to ERB's review and approval, a schedule of power purchase rates which reflects the structure of capacity and energy costs of NAPOCOR for varying levels of power availability and dispatchability. Such power purchase rates shall be adopted as standard power purchase rates for RRPPFs and Cogeneration facilities less than 10,000 kilowatts upon ERB approval of such rates to facilitate price negotiations with NAPOCOR and/or other electric utilities and qualified RRPPFs or Cogeneration facilities.

## **PART III SPECIFIC PROVISIONS ON BLOCK POWER PRODUCTION FACILITIES**

The following Articles shall further guide proponents/owners of Block Power Production Facilities (BPPFs), in addition to the general provisions of Part I of these Rules and Regulations.

## **ARTICLE I DEFINITIONS AND QUALIFICATIONS OF A BLOCK POWER PRODUCTION FACILITY AS A QUALIFIED PSGF**

SECTION 1. *Definition of Block Power Production Facilities.* – Block Power Production Facilities, or BPPFs, refer to power generation facilities forming part of the approved power development plans of NAPOCOR and/or other electric utilities, and which shall be implemented through private sector participation via the Build-Own-Operate, Build-Operate-Transfer, Build-Transfer-Operate, or other variants of the aforementioned private power schemes.

Renewable energy-based power generation facilities forming part of NAPOCOR's and/or electric utilities' development plans are BPPFs.

SEC. 2. *Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities.* – Pursuant to Section 1 of Article I, and Sections 1 and 2 of Article II, Part I, the DOE shall require NAPOCOR and/or individual electric utilities to submit power development programs, for the DOE's review and approval. NAPOCOR shall submit to the DOE an annual update of its Power Development Program (PDP) on or before the first day of June beginning 1995 and every year thereafter.

Such submissions should include NAPOCOR's system load forecasts and generation requirements, resource and technology assessments and evaluations, cost assumptions and other technical parameters, and the resulting system expansion plans for NAPOCOR's major and small-island power grids. NAPOCOR submissions should identify power generation projects to be undertaken through private sector participation, the justifications for such, and the indicative timetables for undertaking prequalification of interested private sector entities, tendering of bids, evaluation, and award of private power contracts for each of the projects identified.

Individual electric utilities seeking to implement or contract the implementation

of generation projects shall be required to enter into long-term (ten-year) power supply agreements with NAPOCOR to facilitate NAPOCOR's system planning activities. Such electric utilities shall submit to the DOE their individual or combined long-term power development plans which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and qualified PSGFs) and demand-side resources on or before 15 January 1996 and every year thereafter, for the DOE's review and approval.

SEC. 3. *DOE Review of Power Development Plans.* – The DOE, through its Energy Planning and Monitoring Bureau (EPMB), shall review the power development plans of NAPOCOR and other electric utilities for consistency with the general and specific policies for the sector, validate the assumptions used in formulation of such plans, and check the consistency of such plans with national and regional resource assessments, development programs, and project timetables of various energy upstream activities.

The EPMB shall likewise review the list of power generation projects for private sector implementation and the indicative timetables towards ensuring sufficient lead times for undertaking information dissemination, project organization, and preparation of competitive proposals. The EPMB may also recommend in its approval of the individual development plans of NAPOCOR and/or electric utilities the scaling down or integration of proposed generation projects to ensure the generation of more competitive proposals, with due consideration of cost advantages from economies of scale.

NAPOCOR and/or other electric utilities shall inform and seek the DOE's prior approval to implement generation projects not included in the approved power development plans.

**ARTICLE II**  
**PROCEDURES FOR APPLYING FOR**  
**ACCREDITATION AS A BLOCK POWER**  
**PRODUCTION FACILITY**

*SECTION 1. DOE Announcement of Generation Projects for Private Sector Implementation.*

– Upon the DOE’s approval of the power development plans of NAPOCOR and/or electric utilities, the EIAB shall cause the publication of the list of projects for private sector implementation, together with the target commissioning dates and indicative timetables for commencement of competitive procurement procedures.

Such announcements shall be published in at least three (3) newspapers of general circulation, once a week for two (2) consecutive weeks.

*SEC. 2. BPPF Solicitation by NAPOCOR and other Electric Utilities.* – Following announcement of generation projects for private sector implementation, electric utilities, more particularly investor-owned distribution utilities and electric cooperatives, may express their interest to the EIAB to undertake competitive procurement for certain blocks of capacity included in said announcements.

The EIAB shall allow an electric utility or groups of electric utilities to conduct competitive procurement for certain blocks of programmed BPPF capacity, subject to the following conditions:

- (a) That power to be generated by the block of capacity to be solicited by an electric utility or groups of electric utilities shall not exceed the electric utilities’ anticipated demand (including the provision of reasonable reserve requirements);
- (b) That such blocks of capacity are sufficient in size to generate competitive proposals, and that the remaining block of capacity

can still be competitively bid or contracted out; and

- (c) For electric cooperatives, that the cooperative first obtain NEA’s endorsement of the cooperative’s plan to solicit BPPF proposals and to purchase power from qualified BPPFs.

The EIAB shall then issue an order authorizing the concerned electric utilities to undertake competitive procurement for BPPF proposals. Such competitive procurement activities shall meet the criteria set by the EIAB, or follow the procedures detailed in Section 6 of this Article.

NAPOCOR shall undertake competitive solicitation procedures for the remaining blocks of BPPF capacities within the corresponding timeframe indicated for each of the projects for private sector implementation if, within such timeframes, no other electric utility has expressed interest in undertaking competitive procurement for the remaining blocks of BPPF capacity.

Solicitation schemes other than tender procedures which meet the criteria set forth by the EIAB for competitive procurement, pursuant to Section 4, Article VII, Part I shall be allowed by the EIAB under this Part of the Rules and Regulations.

In case no award is made following conduct of tender procedures, NAPOCOR and/or other electric utilities shall inform and seek the EIAB’s prior approval to either negotiate for the implementation of BPPF capacities or to undertake pre-construction and construction activities themselves. Actual incremental investments, fuel, operating, maintenance and overhead costs of NAPOCOR or the concerned electric utility shall be benchmarked against avoided cost figures of NAPOCOR or the concerned electric utility, determined on the basis of the standard methodology adopted by the EIAB.

SEC. 3. *Participation of Corporations or Consortiums Primarily Engaged in Energy Upstream Operations.* – Pursuant to ownership qualifications provided in Section 1, Article III, Part I, companies or consortiums primarily engaged in indigenous energy exploration, development, and production may undertake the construction and operation of associated generation facilities to the extent that the primary fuel sources for power generation shall come from the local production of such companies or consortiums, and subject to demonstrating the technical and financial qualifications in undertaking the scale and type of generation facility proposed.

Government-owned and controlled corporations involved in energy upstream operations shall be required to seek accreditation for associated generation facilities owned and operated by the same. Private corporations engaged in energy upstream operations intending to generate electricity for sale to the grid, either directly or in joint venture or under contract with state-owned energy upstream companies, shall likewise apply for accreditation with the EIAB.

In all cases, rates for purchase of power generated from such facilities shall be governed by limitations provided in Section 1 of Article V of this Part of the Rules and Regulations.

SEC. 4. *Implementation of BPPFs by Electric Utilities.* – Electric utilities seeking to implement blocks of BPPF capacity shall be governed by the specific provisions of Part IV on “Electric Utility-Owned Generating Facilities”.

SEC. 5. *Facilities not in conformity with Power Development Plans.* – A facility not in conformity with the approved power development plans of NAPOCOR and/or other electric utilities may be proposed and its feasibility be submitted to the EIAB for

consideration as a BPPF. The proponent of a facility not in conformity with the approved development plans should include in its application with the EIAB the block of BPPF capacity that the proposed BPPF can displace with regard to capacity, availability, and commissioning schedule.

The EIAB shall subject such proposals to a thorough evaluation and shall compare its reliability, cost-competitiveness, and potential generation of net foreign exchange savings against programmed BPPFs, as basis for issuing or denying accreditation as a qualified BPPF. Only Provisional Accreditations shall be issued by the EIAB in such instances.

A facility not in conformity with NAPOCOR’s development plans but which has been provisionally accredited by the EIAB as a qualified PSGF under these Rules and Regulations shall be allowed to participate in competitive procurements being undertaken by NAPOCOR and/or any other electric utilities.

SEC. 6. *BPPF Solicitation Procedures.* – The following procedure and provisions shall guide the solicitation of proposals or bids for BPPFs by the NAPOCOR, electric utilities, and government-owned and controlled energy upstream companies, in lieu of procurement schemes meeting the EIAB’s criteria for competitive requirement.

(1) Announcement of request for proposals for required BPPF capacities, together with information on the availability of prequalification documents, as well as schedules, venues, and procedures for prequalification and tendering of bids.

Publication should be made in three (3) newspapers of general circulation, at least once a week for three (3) consecutive weeks, with the last date of publication at least one (1) month before the deadline for the submission of pre-qualification documents.



- (1) Conduct of pre-bid conference for pre-qualified proponents to present the project concept and timetables, government taxes and incentives applicable to proponents, basic criteria for bid evaluation, the negotiable and non-negotiable specifications or requirements of NAPOCOR or the concerned electric utility, bid evaluation procedures, and other information vital for the preparation of competitive technical and financial proposals.
- (2) Tendering of bids must be scheduled so as to allow proponents a reasonable length of time for the preparation of implementable and competitive technical and financial proposals. In setting the date for the submission of bids, the scale of the solicitation, the type of technology and fuel to be employed, and the risks involved on the part of the Private Sector Generator must be considered by NAPOCOR and/or the concerned electric utility.
- (3) To maintain the transparency of the whole solicitation and bidding process, representatives of BPPF proponents must be allowed to witness the receipt, opening, tabulation, and final certification of the contents of the bids received by duly-authorized officials of NAPOCOR and/or electric utilities.

SEC. 7. *EIAB Accreditation of BPPFs.* – Following the conduct of competitive procurement for BPPFs, NAPOCOR and/or the concerned electric utility shall submit to the EIAB a complete copy of the records pertaining to the solicitation, evaluation, selection, and award of a BPPF contract.

Electric utilities which have successfully conducted competitive procurement activities for BPPF facilities shall be required to enter into and submit to the EIAB a long-term, preferably ten-year, power purchase agreement with NAPOCOR for any existing,

incremental, and/or back-up power supply requirements. Should interconnection of an electric utility with NAPOCOR may no longer be necessary, the concerned electric utility shall furnish NAPOCOR and the EIAB a copy of its board's resolution/decision to disconnect from the service of NAPOCOR.

Upon submission of the required documents (i.e., long-term power purchase agreement or board resolution) from the concerned electric utility, the EIAB shall issue the required accreditation documents for the utility-solicited BPPF project upon verification of the BPPF's compliance with the general qualifications for accreditation as a PSGF, and NAPOCOR's and/or the concerned electric utility's compliance with the criteria for competitive procurement or with the recommended solicitation procedure provided in Section 6 above. The EIAB shall issue the required accreditation documents within one (1) month from receipt of all requirements.

For BPPF proposals not in conformity with the power development plans of NAPOCOR and/or individual electric utilities, the EIAB shall take action to approve or deny any application for accreditation as a qualified PSGF within two (2) months from receipt of an application, provided that all necessary information have been submitted to the EIAB. Such accreditation shall be a provisional accreditation which shall be cancelled by the EIAB upon conclusion of competitive procurement procedures and the non-selection of the provisionally-accredited BPPF in the competitive procurement.

### **ARTICLE III**

#### **OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF BLOCK POWER PRODUCTION FACILITIES**

SECTION 1. *Obligation to Purchase Electric Energy from the Qualified BPPF.* –The NAPOCOR and/or the concerned electric utility shall purchase, at rates in accordance

with the succeeding Article hereof, electric energy and capacity which is made available by the owners of the qualified BPPF.

SEC. 2. *Obligation to Sell to a Qualified BPPF.* – NAPOCOR shall sell to the owner of a qualified BPPF maintenance and/or back-up power. In cases of electric utilities contracting to purchase power from a qualified BPPF, NAPOCOR and the concerned electric utilities may include in their long-term power purchase agreements BPPF requirements for back-up and maintenance power.

SEC. 3. *Obligation to Interconnect.* – NAPOCOR and/or the concerned electric utility shall interconnect with qualified BPPFs to accomplish purchases or sales under these Rules and Regulations and following stipulations in the contract between NAPOCOR or the concerned electric utility and the owner of the BPPF on this matter.

Upon effectivity of an agreement for interconnection between the owner of a qualified BPPF and NAPOCOR or any concerned electric utility, NAPOCOR or the concerned electric utility shall issue an order allowing the physical connection of the qualified BPPF to the transmission facilities of NAPOCOR or to the distribution system of the concerned electric utility.

SEC. 4. *Interconnection Costs.* – The owner of a BPPF shall advance investments needed in interconnecting the BPPF with the NAPOCOR grid or the concerned electric utility system. Repayment shall be made in accordance with mutually agreed upon arrangements of the contracting parties. Maintenance costs for the interconnection facilities shall also be agreed upon by the NAPOCOR and the owner of the BPPF.

SEC. 5. *Transmission to Other Electric Utilities (Wheeling).* – NAPOCOR and/or any host utility shall be obligated to transmit or wheel the electricity generated by a qualified BPPF to an electric utility or to NAPOCOR through

the former's transmission and/or distribution lines of 69 KV or higher. NAPOCOR and/or any third party electric utility to which such electricity is transmitted shall purchase the same under this Section.

The rate for purchases by the third party electric utility to which such electricity is transmitted shall be accordingly adjusted to reflect line losses and the corresponding wheeling charges.

## ARTICLE IV

### RATES FOR PURCHASES AND SALES

SECTION 1. *Purchase Rate.* – The purchase rate from a BPPF shall not exceed the “avoided cost” of NAPOCOR and/or the concerned electric utility, as determined thru the conduct of competitive procurement schemes meeting EIAB's criteria for BPPF solicitation or using the standard methodology adopted by the EIAB, pursuant to Section 4, Article VII, Part I of these Rules and Regulations.

SEC. 2. *Rates for Sales.* – NAPOCOR shall sell maintenance power and/or back-up power during unscheduled outages, as available, to BPPFs or to electric utilities contracting power supply with qualified BPPFs, at rates approved by the ERB. Back-up power for capacity unserved by BPPFs due to their unscheduled outages shall be provided by NAPOCOR's reserve units. Penalty due to the inability of the BPPF to provide contracted power during its unscheduled outage shall be stipulated in the contract between the owner of the BPPF and NAPOCOR or the concerned electric utility.

SEC. 3. *Adjustments in Financial Accounting.* – NAPOCOR and the concerned electric utilities shall accordingly adjust its financial accounting systems and procedures resulting from purchases of electricity from a BPPF. The rate of return on rate base levels shall then be determined after all adjustments have been made and set in place.

**ARTICLE V**  
**OPERATING PROCEDURES AND**  
**ENVIRONMENTAL CONCERNS**

SECTION 1. *Security of BPPF.* – For national emergency situations, NAPOCOR, with the assistance of the military, shall provide on-site coordination of BPPF operations to prevent brownouts and ensure the continuity of electric service.

SEC. 2. *Environmental Concerns.* – The BPPF shall consider the environmental impact/effect of its operations. The owner of the BPPF shall ascertain that environmental management standards as required by law through appropriate governmental agencies are met in the construction, operation and maintenance of the BPPF.

**PART IV**  
**SPECIFIC PROVISIONS ON ELECTRIC UTILITY-**  
**OWNED GENERATING FACILITIES**

The following Articles shall further guide electric utilities seeking to engage in self-generation for direct sale to their customers and/or utility plant maintenance.

**ARTICLE I**  
**QUALIFICATIONS AS A PRIVATE SECTOR**  
**GENERATION FACILITY**

SECTION 1. *Ownership.* – Electric utilities shall be allowed to construct, operate and maintain existing or new generating facilities for their self-generation subject to financial limitations provided in Section 4 below. Majority interest by an electric utility on the equity of a PSGF shall be considered as ownership by an electric utility, and shall thus be subject to electric utility regulations concerning rates, financial limitations, taxes and other laws applicable to their operations as electric utilities.

SEC. 4. *Financial Limitations on Electric Utilities.* – An electric utility shall be allowed

to own and operate new generation facilities meeting the qualifications set forth in this Article, provided that the electric utility's ratio of long-term debt to equity is maintained at or below 1.5.

The above financial limitations on electric utilities shall be waived by the EIAB for purposes of accrediting existing generation facilities of electric utilities and for already accredited PSGFs for the internal use of electric utilities as of the effectivity of these Rules and Regulations.

SEC. 3. *Facility Classification.* – Facility classifications allowed under Section 3, Article III, Part I shall apply to PSGFs seeking accreditation under this Part of the Rules and Regulations.

SEC. 4. *Size of Generating Units.* – The limitation on maximum size of generating units as stipulated in Section 4 of Article II, Part I of these Rules and Regulations shall be encouraged in order to facilitate possible NAPOCOR service to these generating plants during forced outages or maintenance periods.

**ARTICLE II**  
**PROCEDURES FOR APPLYING FOR**  
**ACCREDITATION AS A PRIVATE SECTOR**  
**GENERATION FACILITY**

SECTION 1. *Contents of Application.* – In addition to the requirements of Section 1, Article IV, Part I, an electric utility seeking accreditation for a facility which qualifies under the preceding Article shall submit to the EIAB a copy of its long-term power purchase agreement with NAPOCOR for any incremental, maintenance, or back-up power requirements. Adjustments in the long-term power purchase agreement between NAPOCOR and the concerned electric utility shall be considered to the extent that NAPOCOR may still adjust its Power Development Program.

In cases where an electric utility has opted or is opting to no longer connect with NAPOCOR for any incremental or back-up power supply, the electric utility shall present to NAPOCOR and the EIAB a copy of the relevant Board Resolution/s stating such decisions, and releasing NAPOCOR from any obligation to supply the electric utility's power requirements.

SEC. 2. *Accreditation.* – An electric utility's generating facility which meets the criteria for accreditation set forth in the preceding Article, and the conditions of Section 1 of this Article is a qualified PSGF.

Pursuant to the provisions of Section 4, Article IV, Part I, the EIAB may issue a provisional accreditation to a PSGF which meets the criteria for accreditation set forth in the preceding Article, to give the concerned electric utility a reasonable period of time to either finalize a long-term power purchase agreement with NAPOCOR, or issue a Board Resolution releasing NAPOCOR from any further obligation to serve the power requirements of the concerned electric utility.

SEC. 3. *Period of Processing.* – Provided all requirements shall have been complied with, the EIAB shall take action to approve or deny any application for accreditation within two (2) months from the date of the application, unless the EIAB shall have required the submission of' additional information, or postponement of final action on an application or for other reasonable grounds. Any order postponing final action on an application shall state specifically the grounds for postponement, and the date on which a final ruling shall be issued.

SEC. 4. *Non-transferability of Accreditation.* – Accreditations issued by the EIAB to electric utilities owning and operating qualified PSGFs shall not be transferable or assignable except to an electric utility subsidiary determined to be technically and financially-qualified by the EIAB. For purposes of this Section, an electric

utility subsidiary shall mean any company wherein the concerned electric utility holds a majority equity interest.

SEC. 5. *Assumption on Interconnection.* – It shall be assumed that electric utilities owning generating units for their self-generation are already interconnected with the NAPOCOR grid. Any possible interchange of electricity to and from NAPOCOR shall be coursed through said interconnection facilities.

Should a qualified electric utility-owned PSGF, however, require the transmission of any amount of power generated to the owner-electric utility, NAPOCOR and/or the host utility shall be obligated to interconnect such qualified facilities and provide the required wheeling services, pursuant to the provisions of Section 2, Article VI, Part 1.

### ARTICLE III

#### NAPOCOR'S RELATIONSHIP WITH ELECTRIC UTILITIES OWNING FACILITIES FOR SELF GENERATION

SECTION 1. *Provision on Reserve Capacity.* – NAPOCOR shall maintain a reserve capacity in the NAPOCOR grid system considering all generating facilities existing and operating therein. A reasonable annual reserve capacity carrying fee, as determined by NAPOCOR and approved by the ERB, shall be paid by all generating electric utilities requiring maintenance and/or back-up power from NAPOCOR. Such payment shall make NAPOCOR obligated to provide maintenance and back-up power requirements of affected electric utilities on an "as-available" basis.

SEC. 2. *Provision of Incremental PSG Power.* – NAPOCOR shall supply incremental PSG power to the electric utility owning facilities for self-generation to the extent provided in a long-term contract for this purpose. The selling rate of NAPOCOR for incremental PSG power shall be at rates approved by the ERB.

SEC. 3. *Provision for System Emergencies.* – NAPOCOR and electric utilities with self-generation may mutually agree on the provision of power during system emergencies in their respective systems to the extent possible and under terms to be agreed upon by both parties.

SEC. 4. *Dispatchability.* – Electric utilities with self-generation shall conform with policies pertaining to the Dispatch Management System (DMS) of NAPOCOR.

SEC. 5. *Production Cost Higher than NAPOCOR's.* – At a time when production cost from the generating units solely for internal use of an electric utility is higher than buying from NAPOCOR, and the electric utility decides to get power from NAPOCOR to replace its own generation, NAPOCOR shall sell to said electric utility provided that: NAPOCOR's unit production cost would remain the same with the added load; NAPOCOR's system operations would not be hampered; NAPOCOR's service to other customers would not be unduly affected; and NAPOCOR would not be pressured to add new capacities to meet the new load. NAPOCOR shall not be obligated to purchase the generating facilities of the electric utility as such action may be detrimental to the interest of NAPOCOR's regular customers.

SEC. 6. *Excess Production of PSGF.* – In instances when the generating units of the electric utilities are capable of producing electricity in excess of their requirement, NAPOCOR shall not be obligated to purchase such excess power. In instances when NAPOCOR may opt to purchase power from said electric utility, purchase rate shall not exceed the "avoided cost" of NAPOCOR at the time of delivery.

SEC. 7. *Change of Status.* – An electric utility with an accredited facility for self-generation may decide to sell excess production on a regular basis to NAPOCOR or to another electric utility. Terms and conditions of purchase by NAPOCOR shall be consistent

with the applicable provisions given in Parts I and III of these Rules and Regulations and shall be stipulated in a Contract.

SEC. 8. *Periodic Reporting to the EIAB.* – The electric utility owning facility for self-generation shall regularly submit to the DOE, thru the EIAB, operating and other information as may be required by the DOE for monitoring and planning purposes.

SEC. 9. *Formulation of Power Development Plans.* – Electric utilities owning and operating facilities for self-generation shall submit to the DOE, for review and approval, their individual or combined long-term power development plans which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and other qualified PSGFs) and demand-side resources on or before 15 January 1996 and every year thereafter.

## **PART V OTHER PROVISIONS**

SECTION 1. *Implementation of the Rules and Regulations.* – The EIAB shall take all necessary and reasonable measures to ensure that the provisions of these Rules and Regulations are made effective.

SEC. 2. *DOE Revision of the Rules and Regulations.* – The DOE shall prescribe and, from time to time thereafter, revise such Rules as it determines necessary to encourage private sector participation in power production. Such Rules shall be prescribed after consultation with the private sector and appropriate government agencies.

SEC. 3. *Publication.* – These Rules and Regulations shall take effect fifteen (15) days after the date of publication in one (1) newspaper of general circulation.

**FRANCISCO L. VIRAY**  
Acting Secretary  
Fort Bonifacio, Metro Manila, 2 January 1995

## DEPARTMENT CIRCULAR NO. 97-01-001

AMENDING CERTAIN PROVISIONS OF ENERGY REGULATIONS NO. 1-95, ENTITLED "RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 215 ON PRIVATE SECTOR GENERATION IN POWER GENERATION"

---

**WHEREAS**, the Department of Energy (the "Department") as part of its mandate under the *Department of Energy Act of 1992*, is embarking upon a major restructuring of the Philippine electric power industry;

**WHEREAS**, the Department is collaborating with Congress in formulating an "Omnibus Electric Power Industry Act", which will ordain reforms in restructuring the electric power industry and in promoting wider participation of the private sector in the generation, transmission and distribution subsectors;

**WHEREAS**, there is an increasing private sector involvement in power generation in the light of: i) continuing plans by non-utilities on generation primarily for their internal use; and ii) the establishment of special economic zones or "ecozones" which have the franchise to operate heat, light and power utilities by virtue of Republic Act No. 7916 creating the Philippine Economic Zone Authority;

**WHEREAS**, it would now be timely and imperative for the Department to monitor the entry of new generating capacity and thereby revise and prescribe certain provisions of Energy Regulations (E.R.) No. 1-95, consistent with the above-cited developments;

**NOW, THEREFORE**, the Department hereby adopts and promulgates the following amendments to certain provisions of E.R. No. 1-95:

SECTION 1. Part I, Article I, Sections 3 (n) and 3 (1.1) n *Definition of Terms* are hereby amended to read as follows:

"(n) 'Electric utility' refers to the

utility operating within the NAPOCOR grids or other electric systems such as an electric cooperative, local-government-owned and privately-owned electric utility, including any light and power utility operating within special zones established or registered by the Philippine Economic Zone Authority.

"(o) 'Renewable Energy Sources' means the following sources of energy that are regenerative or virtually inexhaustible, namely, biomass, solar, wind, micro-hydro (below 100 kilowatts) and mini-hydro (101 to 10,000 kilowatts), and also means by-product materials that, but for their use as a source of energy, would be considered waste."

SEC. 2. Part I, Article III, Section 6 is hereby amended to read as follows:

"SEC. 6. *Economic Criteria.* – Any proposed electric generating facility should submit to the EIAB at least a ten-year power supply agreement for capacity and energy between NAPOCOR and the electric utility that will be served by the facility to enable the EIAB to determine that said facility satisfies incremental load/demand, and should be able to demonstrate its potential for providing net foreign exchange savings for the country, by virtue of:

"(a) generating electric energy more efficiently or cheaper than can otherwise be generated

by existing or programmed generation facilities under the power development plans of NAPOCOR and/or other electric utilities; and/or

“(b) using indigenous and/or renewable energy sources; and/or

“(c) accessing lower costs of capital, cheaper plant investment, and/or locally-manufactured equipment.”

SEC. 3. Part I, Article IV, Section 9 is hereby amended to read as follows:

“SEC. 9 *EIAB Monitoring of accredited PSGFs.* – Owners/proponents of accredited PSGFs shall submit monthly status reports on the progress of each accredited project to the EIAB, and shall immediately inform the EIAB of any substantial changes in the project that may have an impact on the PSGF’s qualified status. The PSGF shall likewise advise the EIAB on the attainment of project milestones (e. g., site groundbreaking, issuance of environmental clearances and other permits, financial closing, etc.) for monitoring purposes.

“The EIAB shall render monthly reports to the DOE Secretary on the progress of accredited projects. Copies of these reports shall be regularly furnished to concerned bureaus and agencies of the DOE for information and coordination.”

SEC. 4. Part I, Article IV, Section 14 is hereby amended to read as follows:

“SEC. 14. *Generation by Non-Utilities Primarily for Internal Use.*

– A non-utility PSGF shall apply for accreditation and shall submit to the EIAB plans to construct and operate electric generating facility for the owner’s internal use subject to compliance with the economic criteria provided for in Section 6, Article III, Part I of these Rules and Regulations. In order to enable EIAB to determine that said facility satisfies incremental load/demand, the non-utility PSGF shall submit at least a ten-year power supply agreement for capacity and energy with the franchised electric utility where the generating plant is located. Such plans shall be reviewed by the EIAB and integrated into the formulation of the national power development plan.”

SEC. 5. Part II, Article I, Section 2 is hereby amended to read as follows:

SEC. 2. *Definition of Renewable Resource Power Production Facilities (RRPPFs).* – RRPPFs, as defined in these Rules and Regulations, refers to any facility which produces electricity by the use of renewable energy sources as its primary energy source. Renewable energy sources means the following sources of energy that are regenerative or virtually inexhaustible, namely, biomass, micro-hydro (below 100 kilowatts) and mini-hydro (101 kilowatts to 10,000 kilowatts), and also means by-product material that, but for their use as a source of energy, would be considered waste. Geothermal, small-hydro (10,000 kilowatts to 50,000 kilowatts) and large-hydro (over 50,000 kilowatts) facilities should be considered Block Power Production Facilities as provided for under Part III of these Rules and Regulations.

“Primary energy source, on the other hand, means the fuel/s used for the generation of electricity, except that such terms do not include:

“(a) The minimum amounts of fuel required for ignition, start up, testing, flame stabilization and control uses; and

“(b) The minimum amounts of fuel required to alleviate or prevent:

“(i) unanticipated equipment outages; and

(ii) emergencies directly affecting the public health, safety or welfare, which would result from electric power outages.”

SEC. 6. Part II, Article II, Section 1 is hereby amended to read as follows:

“SECTION 1. *Accreditation of RRPPFs and Cogeneration Facilities.*  
– An RRPPF meeting the general qualifications under Article III of Part I of these Rules and Regulations, without requiring the submission of any long-term power supply agreement, is a qualified PSGF. A cogeneration facility is a qualified PSGF under these Rules and Regulations if it meets the general qualifications under Article III of Part I, and the thermal efficiency standard for cogeneration projects, as defined in Section 2 of this Article.”

SEC. 7. Part III, Article I, Section 2 is hereby amended to read as follows:

“SEC. 2. *Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities.* – Pursuant to Section 1 of Article I and Sections 1 and 2 of Article II, Part I, the DOE shall

require NAPOCOR and/or individual electric utilities to submit power development programs covering a ten-year period, for the DOE’s review and approval. NAPOCOR shall submit to the DOE an annual update of its Power Development Program (PDP) on or before the first day of June beginning 1997 and every year thereafter.

“Such submissions should include NAPOCOR’s system load forecasts and generation requirements, resource and technology assessments and evaluations, cost assumptions and other technical parameters, and the resulting system expansion plans for NAPOCOR’s major and small-island power grids. NAPOCOR’s submissions should identify power generation projects to be undertaken through private sector participation, the justifications for such, and the indicative timetable for undertaking prequalification of interested power sector entities, tendering of bids, evaluation, and award of private power contracts for each of the projects identified.

“Individual electric utilities seeking to implement or contract the implementation of generation projects shall be required to enter into long-term power supply agreements for capacity and energy of at least ten years with NAPOCOR’s system planning activities. Such electric utilities shall submit to the DOE their individual or combined long-term power development plans, which shall contain an efficient portfolio or generation (including projected power purchases from NAPOCOR and qualified PSGFs) and demand-side resources on or before 30 April 1997 and every year after, for the DOE’s review and approval.



“Accordingly, no application for accreditation of any proposed electric generating facility for an electric utility shall be entertained by the DOE without the concerned electric utility’s long-term power supply agreement with NAPOCOR and its DOE-approved power development plan.

“NAPOCOR and/or other electric utilities shall inform and seek the DOE’s prior approval to implement generation projects not included in the approved development plans.”

SEC. 8. Part III, Article I, Section 3 is hereby amended to read as follows:

“SEC. 3. *DOE Review of Power Development Plans.* – The DOE’s Energy Industry Administration Bureau (EIAB), as part of its mandate to review, evaluate, and accredit private sector proposals, shall review the power development plans of NAPOCOR and other electric utilities.

“The EIAB, in consultation with the Energy Planning and Monitoring Bureau, shall formulate the parameters for the planning horizon and disseminate the same not later than 31 March 1997 and every year thereafter.

“The review of power development plans shall take into account consistency with the general and specific policies for the energy sector, validate the assumptions used in formulation of such plans, and check the consistency of such plans with national and regional resource assessments, development programs, and project timetables of various energy upstream activities.

“The EIAB shall likewise review the list of power generation projects for private sector implementation and the indicative timetables towards ensuring sufficient lead times for undertaking dissemination, project organization, and preparation of competitive proposals. The EIAB may also recommend in its approval of the individual development plans of NAPOCOR and/or electric utilities scaling down or integration of proposed generation projects to ensure the generation of more competitive proposals, with due consideration of cost advantages from economies of scale.

“The EIAB shall recommend the DOE’s approval and adoption of power development plans and their integration with the Philippine Energy Plan not later than 30 June 1997 and every year thereafter.

“NAPOCOR and/or other electric utilities shall inform and seek the DOE’s prior approval to implement generation projects not included in the approved power development plans.”

SEC. 9. Part IV, Article III, Section 9 is hereby amended to read as follows:

“SEC. 9. *Formulation of Power Development Plan.* – Electric utilities owning and operating facilities for self-generation shall submit to the DOE, for review and approval, their individual or combined long-term power development plans, which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and other qualified PSGFs) and demand-side resources on or before 30 April 1997 and every year thereafter.”

SEC. 10. DEPARTMENT CIRCULAR NO.96-08-010 dated 26 August 1996, suspending accreditation of certain power generation proposals, is hereby repealed.

SEC. 11. This Circular shall take effect immediately a day after its complete

publication in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 21 January 1997.

**FRANCISCO L. VIRAY**  
Secretary

## DEPARTMENT CIRCULAR NO. 2000-03-004

FURTHER AMENDING ENERGY REGULATIONS NO. 1-95 DATED JANUARY 2, 1995 ENTITLED "RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 215 ON PRIVATE SECTOR PARTICIPATION IN POWER GENERATION" AS AMENDED BY DEPARTMENT CIRCULAR NO.97-01-001 DATED JANUARY 21, 1997

**WHEREAS**, Executive Order No. 215 issued on July 10, 1987 allows the participation of private sector in power generation;

**WHEREAS**, the Department of Energy (the DOE) encourages the participation of the private sector in the power generation business consistent with the said Executive Order;

**WHEREAS**, the DOE recognizes the unique contribution to be made by Renewable Resource Power Production Facilities (RRPPF) also known as the New and Renewable Energy Facilities (NREF) in the country's generation mix and in meeting rural electrification targets;

**WHEREAS**, there is an imperative need to facilitate and enhance the participation of RRPPF/NREF in power generation in view of the country's growing electricity requirement;

**NOW, THEREFORE**, the DOE hereby adopts and promulgates the following amendments to Energy Regulations No. 1-95 as amended by DEPARTMENT CIRCULAR NO.97-01-001:

SECTION 1. Part I, Article IV, Section I of Energy Regulations No. 1-95 as amended by

DEPARTMENT CIRCULAR NO.97-01-001 is hereby amended to read as follows:

"SECTION 1. *Contents of the Application.* – The contents of applications for accreditation as a qualified Private Sector Generation Facility (PSGF) should generally contain the following information:

"(a) Name and address of the applicant and location of the proposed facility;

"(b) Project organizational set-up;

"(c) Names of cooperative/participating companies, equity participation, incorporation documents, audited financial statements for the last two fiscal years, and records of successful experience in similar activities over the last five (5) years;

"(d) Project financing plans;

"(e) Administrative and technical manpower complements;

“(f) Facility classification and general plant description;

“(g) Sale of PSGF generation (whether generation is solely for sale to the grid, dedicated to an electric utility, or for internal use with provision for sale of excess power to the grid);

“(h) Projected mode of operation (base load or peaking);

“(i) Power and annual energy production capacity (in kW and kWh, respectively) of the proposed facility;

“(j) Primary energy source (fuel) of the facility, heating value and net plant rate;

“(k) Projected forced outage rate, maintenance days, dependable capacity and station energy use;

“(l) Projected economic life of project and proposed duration of interconnection /cooperation period;

“(m) Interconnection plans with NAPOCOR or other electric utility;

“(n) Detailed project timetable, including target periods for financial closing, groundbreaking, installation of major plant equipment, testing and commissioning of the facility;

(o) Any other information as may be required under the specific provisions of Parts II, III, IV or as may be deemed necessary by the EIAB for evaluation purposes.

“However, records of successful experience in similar activities over the last five (5) years as requisite in Item c. above shall not be required for RRPPF/NREF projects provided that:

“(1) the technology being proposed has already achieved commercial status and can be demonstrated to be adaptable to local conditions; or

“(2) the project is being developed for purposes of self-generation, and the developer demonstrates the capability to provide or the financial capacity to retain the competent technical and financial capabilities necessary to implement to proposed project; or

“(3) if the project is being developed by a utility or independent power producer, the developer demonstrates the capability to provide or the financial capacity to retain the competent technical and financial capabilities necessary to implement the proposed project.”

SEC. 2. Part I, Article VI, Section 3 of the same Energy Regulations as amended by DEPARTMENT CIRCULAR NO.97-01-001 is hereby amended to read as follows:

“SEC. 3. *Provision on Spinning Reserve.* – The owner of the PSGF shall maintain a continuous spinning reserve at all times to the extent possible and under terms to be agreed upon with NAPOCOR or the concerned electric utility. However, this provision on spinning reserve shall not apply to RRPPF/NREF projects if:

“(1) the project is not connected to either the national backbone grid, or regional or island mini-grids; or

“(2) the project is connected to a regional or island mini-grid powered by conventional generation reasonably capable of load following, e.g., peaking or intermediate diesel generation plants.

“Further, if the RRPPF/NREF project is proposed for connection to the national backbone grid, the provision on spinning reserve shall be subject to negotiation with the transmission system operator or from any future regulatory body overseeing the operations of the transmission grid system.”

SEC. 3. Part II, Article II, Section 3 of the same Energy Regulations as amended by DEPARTMENT CIRCULAR NO.97-01-001 is hereby amended to read as follows:

“SEC. 3. *Cogeneration Facilities Utilizing Renewable Energy Sources.* – Cogeneration facilities utilizing renewable energy forms as its primary energy source or utilizing renewable energy sources and fossil fuels, either through a blend, combination, or alternating use of such fuels, shall be classified as Renewable Resource Cogeneration Facilities for of accreditation as qualified PSGFs. Renewable Resource Cogeneration Facilities shall not be subject to the minimum thermal efficiency standards required for cogeneration facilities under Section 2 of this Article.”

SEC. 4. Part I, Article III, Section 6 of the same Energy Regulations as amended by DEPARTMENT CIRCULAR NO.97-01-001 is hereby further amended to read as follows:

“SEC. 6. *Economic Criteria.* – Any proposed electric generating facility should submit to EIAB at least a ten-year power supply agreement for capacity and energy between NAPOCOR and/or the electric utility that will be served by the facility to enable to EIAB to determine that said facility satisfies incremental load/demand, and should be able to demonstrate its potential for

providing net foreign exchange savings to the country, by virtue of:

“(a) generating electric energy more efficiently or cheaper than can otherwise be generated by existing or programmed generation facilities under the power development plans of NAPOCOR and/or other electric utilities; and /or

“(b) accessing lower costs of capital, cheaper plant investment, and/or locally manufactured equipment.”

“However, proposed RRPPF shall not be required to submit the above power supply agreement to EIAB but should be able to demonstrate its potential for providing net foreign exchange savings to the country, by virtue of using indigenous and/or renewable energy sources.”

SEC. 5. Part III, Article I, Section 2 of the same Energy Regulations as amended by DEPARTMENT CIRCULAR NO.97-01-001 is hereby further amended to read as follows:

“SEC. 2. *Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities.* – Pursuant to Section 1 of Article I and Sections 1 and 2 of Article II, Part I, the DOE shall require NAPOCOR and/or individual electric utilities to submit power development programs covering a ten-year period, for the DOE’s review and approval.

“NAPOCOR shall submit to the DOE an annual update of its Power Development Program (PDP) on or before the first day of June 1997 and every year thereafter.

“Such submissions should include NAPOCOR’s system load forecasts and

generation requirements, resource and technology assessments and evaluations, cost assumptions and other technical parameters, and the resulting system expansion plans for NAPOCOR's major and small-island power grids. NAPOCOR submissions should identify power generation projects to be undertaken through private sector participation, the justification for such, and the indicative timetables for undertaking prequalification of interested private sector entities, tendering of bids, evaluation, and award of private power contracts for each of the projects identified.

“Individual electric utilities seeking to implement or contract the implementation of generation projects shall be required to enter long-term power supply agreements for capacity and energy of at least ten years with NAPOCOR to facilitate NAPOCOR's systems planning activities.

“Such electric utilities shall submit to the DOE their individual or combined long-term power development plans which shall contain an efficient portfolio or generation (including projected power purchases from NAPOCOR and qualified PSGFs) and demand-side resources on or before 30 April 1997 and every year thereafter, for the DOE's review and approval.

“However, RRPPF/NREF projects intending to provide electricity to an electric utility or for internal use

or exclusive use by an identified customer shall not be required to submit to the DOE its long-term power supply agreement with NAPOCOR and its DOE-approved power development plan.

“Accordingly, with the exception of RRPPF/NREF projects mentioned above, no application for accreditation of any proposed electric generating facility for an electric utility shall be entertained by the DOE without the concerned utility's long-term power supply agreement with NAPOCOR and its DOE-approved power development plan.

“NAPOCOR and/or other electric utilities shall inform and seek the DOE's prior approval to implement generation projects not included in the approved development plans.”

SEC. 6. This Circular shall take effect immediately a day after its complete publication in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 17 March 2000.

Witnessed by:

**MARIO V. TIAOQUI**  
Secretary

**OLEGARIO S. SERAFICA**  
President, Renewable Energy Association of the Philippines, Inc.

## DEPARTMENT CIRCULAR NO. 2002-06-003

### WHOLESALE ELECTRICITY SPOT MARKET RULES

---

**WHEREAS**, Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (Act), which became effective on the 26th of June 2001 provides the framework for the restructuring of the electric power industry to bring about a free and fair competition on the pricing of electricity;

**WHEREAS**, the Act mandates the establishment of a wholesale electricity spot market (WESM) where the trading of electricity can be made;

**WHEREAS**, the Act enjoined and authorized the Department of Energy (DOE) to establish the WESM, and formulate the detailed rules thereof within one (1) year from the effectivity thereof: *Provided That*, the price determination methodology shall be subject to the approval of the Energy Regulatory Commission;

**WHEREAS**, in accordance and in compliance with the Act, the DOE undertook a series of public consultations to jointly formulate the WESM Rules with electric power industry participants;

**WHEREAS**, the development of the WESM Rules had commenced since March 2000 and the very first draft was posted in the DOE website for information of and dissemination to the public in March 2001;

**WHEREAS**, after the effectivity of the Act and its Implementing Rules and Regulations

the draft was updated to conform with the provisions thereof and posted in November 2001.

**WHEREAS**, numerous public consultations since November 2001 have been held to discuss and solicit comments, views, suggestions on the proposed WESM Rules, viz.:

- Series of public consultative workshops from November to December of 2001;
- National Consolidation Workshop to facilitate resolution of differing views, comments and suggestions held in Baguio City on February 19, 2002;
- Sectoral Consolidation Workshops with different industry participants of the sectors of the electricity industry held at the DOE from June 10 to 11 of 2002;
- Finalization Workshops to finalize the WESM Rules held at the DOE from June 13 to 26 of 2002.

**NOW THEREFORE**, pursuant to its mandate under the Act, the DOE hereby issues, adopts and promulgates the attached WESM Rules, which shall be effective on the fifteenth (15th) day following its publication in at least two (2) national papers of general circulation.

**VINCENT S. PÉREZ, JR.**  
Secretary

# WHOLESALE ELECTRICITY SPOT MARKET RULES

---

## CHAPTER 1 INTRODUCTION

### 1.1 SCOPE OF CHAPTER 1

- (a) Purpose of the *WESM Rules*;
- (b) Parties bound by the *WESM Rules*;
- (c) Responsibilities of the *Market Operator*;
- (d) Responsibilities of the *System Operator*;
- (e) Composition and functions of the *PEM Board*;
- (f) Responsibilities of the *PEM Auditor*;
- (g) Responsibilities of the *Market Surveillance Committee*;
- (h) Responsibilities of the *Technical Committee*; and
- (i) Public consultation procedures.

### 1.2 PURPOSE AND APPLICATION OF RULES

#### 1.2.1 About the Philippines Wholesale Electricity Spot Market Rules

1.2.1.1 This document shall be known as the Wholesale Electricity Spot Market Rules ("*WESM Rules*").

1.2.1.2 Formulated jointly with electric power industry participants;

1.2.1.3 Promulgated by the DOE;

1.2.1.4 In the *WESM Rules*, words and phrases that appear in italics are defined in the glossary in chapter 11.

1.2.1.5 The *WESM Rules* shall be interpreted in accordance with the provisions of chapter 9, objectives of the *Act* and other provisions of law.

#### 1.2.2 Purpose of the *WESM Rules*

The *WESM Rules* are promulgated to implement the provisions of the *Act*, its Implementing Rules and Regulations and other related laws as well as to:

- (a) Promote competition;
- (b) Provide an efficient, competitive, transparent and reliable *spot market*;
- (c) Ensure efficient operation of the *WESM* by the *Market Operator* in coordination with the *System Operator* in a way which:
  1. Minimizes adverse impacts on *system security*;
  2. Encourages market participation; and
  3. Enables access to the *spot market*.
- (d) Provide a cost-effective framework for resolution of disputes among *WESM Participants*, and between *WESM Participants* and the *Market Operator*;
- (e) Provide for adequate sanctions in cases of breaches of the *WESM Rules*;
- (f) Provide efficient, transparent and fair processes for amending the *WESM Rules*;

- (g) Provide for the terms and conditions to which entities may be authorized to participate in the *WESM*;
- (h) Provide the authority and governance framework of the *PEM Board*; and
- (i) Encourage the use of environment-friendly renewable sources of energy in accordance with the *Act*.

*Utilities*, and *Suppliers*, inconsistencies between the *WESM Rules*, the *Grid Code* and the *Distribution Code*, may be referred to the *ERC* for resolution only.

### 1.2.3 The Regulatory Framework

1.2.3.1 The *Act* mandates the Department of Energy (*DOE*) to promulgate the detailed rules for the *WESM*, which it shall formulate jointly with the Electric Power Industry Participants.

1.2.3.2 To ensure a greater supply and rational pricing of electricity, the *Act* provides the Energy Regulatory Commission (*ERC*) the authority to enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot *Market Operator* and other participants in the spot market.

1.2.3.3 The *WESM Rules* form part of the regulatory framework which is applicable to the owners, operators and users of the *power system* under the *Act*.

1.2.3.4 On matters pertaining to financial and technical standards set for *Generation Companies*, *TRANSCO*, *Distribution*

### 1.2.4 Scope of Application

Pursuant to Section 30 of the *Act*, all *WESM Participants* shall comply with the *WESM Rules* and applicable laws or regulations of the Philippines.

### 1.2.5 WESM Objectives

The objectives of the *spot market* are to establish a competitive, efficient, transparent and reliable market for electricity where:

- (a) A level playing field exists among *WESM Participants*;
- (b) Trading of electricity is facilitated among *WESM Participants* within the *spot market*;
- (c) Third parties are granted access to the *power system* in accordance with the *Act*;
- (d) Prices are governed as far as practicable by commercial and market forces; and
- (e) Efficiency is encouraged.

## 1.3 MARKET OPERATOR AND SYSTEM OPERATOR

### 1.3.1 Responsibilities of the *Market Operator*

1.3.1.1 The *Market Operator* shall, generally and non-restrictively, have the



following functions and responsibilities:

- (a) Administer the operation of the WESM in accordance with the WESM rules;
- (b) Allocate resources to enable it to operate and administer the WESM on a non-profit basis;
- (c) Determine the *dispatch schedule* of all facilities in accordance with the *WESM Rules*. Such schedule shall be submitted to the *System Operator*.
- (d) Monitor daily trading activities in the market.
- (e) Oversee transaction billing and settlement procedures; and
- (f) Maintain and *publish* a register of all *WESM Participants* and update and *publish* the register whenever a person or entity becomes or ceases to be a *WESM Participant*.

1.3.1.2 In performing clause 1.3.1.1 (d), the *Market Operator* shall:

- (a) Determine whether or not such trading is performed in accordance with the WESM Rules;

- (b) Identify any significant variations in and between trading intervals; and

- (c) Identify any apparent or suspected incidents of *anticompetitive behavior* by any *WESM Member*.

1.3.1.3 The *Market Operator* shall, in consultation with *WESM Participants*, develop guidelines as to what constitutes a significant variation.

1.3.1.4 If the *Market Operator* identifies any significant variations, the *Market Operator* shall, prepare and *publish* a report explaining the identified significant variations within ten *business days* from the cognizance thereof.

1.3.1.5 The *Market Operator* shall provide a printed copy of the completed report referred to in clause 1.3.1.4 to:

- (a) The *DOE* and the *ERC*;

- (b) The *PEM Board*; and

- (c) *WESM Members* and interested entities on request.

1.3.1.6 Where the *WESM Rules* require the

*Market Operator* to develop procedures, processes or systems, the *Market Operator* shall do so after taking into consideration the likely costs to *WESM Participants* of complying with those procedures or processes and of obtaining, installing or adopting those systems, as the case may be and consistent with the purpose set forth in clause 1.2.2, the *Market Operator* may recommend changes to these procedures in accordance with the Rule Change process set out in Chapter 8.

1.3.1.7 The *Market Operator* shall:

- (a) Comply with each of the requirements and obligations imposed on it under the *WESM Rules*, *Grid Code*, and other applicable laws or regulations;
- (b) Implement the transitory provision specified in Chapter 10;
- (c) Perform those actions that are required to be taken prior to the *spot market commencement date*, as specified in the *WESM Rules*

and clause 10.4 hereof; and

- (d) Develop appropriate cost recovery processes to cover its liabilities in the event of damage or injury, which may be caused by its acts or omissions in the faithful performance of its functions.

1.3.1.8 The *Market Operator* shall ensure that the *dispatch schedules* comply with any constraints notified by the *System Operator* in accordance with clause 6.6.1.

1.3.2 Market Operator Performance

1.3.2.1 In exercising its discretions and performing its obligations under the *WESM Rules*, the *Market Operator* shall:

- (a) Act in accordance with any standard of performance provided for by any statute, regulation or *authorization* condition to which the *Market Operator* is subject;
- (b) Act in a reasonable and prudent manner;

(c) Act in good faith; defined in clause 1.2.5.

(d) Take into consideration, act consistently with and use its reasonable endeavors to contribute towards the achievement of the WESM objectives; and

(e) Ensure an audit trail of documentation that is fully adequate to substantiate and reconstruct all relevant actions performed.

1.3.2.2 Clause 1.3.2.1 does not prevent the *Market Operator* from performing any obligation under the *WESM Rules*.

1.3.2.3 Every year, the *Market Operator* shall prepare and *publish* performance indicators which monitors and provides an indication of, the *Market Operator's* performance under the *WESM Rules* with respect to:

(a) The *Market Operator's* responsibilities under the *WESM Rules*; and

(b) The achievement of the WESM objectives as

### 1.3.3 Responsibilities of the System Operator.

Under these Rules, the *System Operator* shall have the following functions and responsibilities:

(a) Be responsible for and operate the *power system* in accordance with the *WESM Rules*, the *Grid Code* and any instruction issued by the *Market Operator* or the *ERC*.

(b) Provide *central dispatch* to all generation facilities and loads connected, directly or indirectly, to the transmission system in accordance with the *dispatch schedule* submitted by the *Market Operator*.

(c) Contribute towards the development of procedures, processes or systems, or to assist with any aspect of the operation of the *spot market*, in coordination with the *Market Operator*.

(d) Implement the transitory provisions specified in Chapter 10; and

(e) Perform those actions that are required to be taken prior to the *spot market commencement date* as specified in the *WESM Rules* and clause 10.4.

## 1.4 GOVERNANCE OF THE MARKET

The *WESM* governance is the process by which decisions are made and implemented within the market to ensure

attainment of the WESM objectives under clause 1.2.5.

#### 1.4.1 Philippine Electricity Market (PEM) Board

1.4.1.1 The *WESM* shall be governed, and its powers and functions exercised by the *PEM Board*.

1.4.1.2 In addition to the powers of a corporation under the Corporation Code and those stated herein, the *PEM Board* shall have all powers necessary, convenient and incidental to the performance of its functions and responsibilities in accordance with the *WESM Rules*.

1.4.1.3 In performing its functions, the *PEM Board* shall act in a reasonable, ethical and prudent manner, which facilitates an efficient, competitive, transparent and reliable *spot market* and is consistent with the WESM objectives.

1.4.1.4 The *PEM Board* may delegate any of its functions, obligations and powers to a committee or other entity in circumstances when it is reasonable, at its judgment, to do so.

1.4.1.5 The *PEM Board* shall conduct its business

activity in accordance with its Articles and By-laws and other applicable laws, rules or regulations.

#### 1.4.2 Composition of the PEM Board

1.4.2.1 Composition of the *PEM Board* shall be in accordance with the following criteria:

(a) Each sectors of the electric power industry shall be represented in the *PEM Board*;

(b) The number of representatives of each sector of the Philippine electric power industry should be such that no one sector of the industry can dominate proceedings or decision-making by the *PEM Board*; and be selected in such a way that deadlocks in decision-making processes should be avoided;

(c) There should be sufficient independent *directors* appointed to the *PEM Board* to balance the number of *directors* representing the Philippines electric power industry; and

(d) Be set out in detail in clause 1.4.2.4 so as to reflect and be consistent with the criteria stated herein.

1.4.2.2 If at any time the structure or size of the Philippine electric power industry or any sector within it changes so that the detailed composition of the *PEM Board* as set out in clause 1.4.2.4 is no longer reflective of or consistent with clause 1.4.2.1, clause 1.4.2.4 shall be amended in accordance with the Rules change process in chapter 8 and consequential changes to the *PEM Board* shall be made as soon as practicable so that the *PEM Board* reflects and is consistent with the principles set out in clause 1.4.2.1.

1.4.2.3 For the purposes of this clause 1.4.2 the electric power industry is comprised of the following sectors, viz.:

- (a) Distribution;
- (b) Generation;
- (c) Transmission;
- (d) Supply, sale and purchase by entities other than those which undertake activities in the distribution, *generation* and *transmission*

sectors.

1.4.2.4 The *PEM Board* shall consist of:

- (a) One (1) *Director* representing the *Market Operator*;
- (b) One (1) *Director* representing the *National Transmission Company (TRANSCO)*;
- (c) Four (4) *Directors* who are nominated by *WESM Members* registered under clause 2.3.4 as *Distribution Utilities*, provided that:
  - (1) Two (2) of those *Directors* are representatives of and nominated by *Electric Cooperatives*; and
  - (2) Two (2) of those *Directors* are representatives of and nominated by *Distribution Utilities* which are not *Electric Cooperatives*;
- (d) One (1) *Director* who is representative of and nominated by *Customers*, including but not limited to *Suppliers*;

- (e) Four (4) Directors who are representatives of and nominated by *Generation Companies* registered under clause 2.3.1;
- (f) Four (4) *Directors* who are:
- (1) Independent of the Philippines electric power industry and the *Government*;
  - (2) Not eligible to be appointed as a representative under clauses 1.4.2.3 (a), (b), (c), or (d); and
  - (3) Nominated by *WESM Members*;
- (g) A Chairperson who is one of the four independent Directors of the *PEM Board* and who is elected by a majority of all members of the *PEM Board*. The first Chairperson of the *PEM Board*, however, shall be the *DOE* Secretary in accordance with the Implementing Rules and Regulations of the *Act*.
- All of the above representatives shall formally be appointed in accordance with clause 1.4.3.
- 1.4.2.5 A *Director* of the *PEM Board* may only serve on the *PEM Board* at any point in time as a representative of one category of representative under clause 1.4.2.4.
- 1.4.2.6 A company, firm or business, which is represented on the *PEM Board* in one category under clause 1.4.2.4, may not be represented by an individual in any other category under clause 1.4.2.4, regardless of whether the company, firm or business has interests in more than one sector of the Philippines electricity industry.
- 1.4.2.7 For the purposes of this clause 1.4.2, a person is deemed to be independent of the Philippine electric power industry if that person:
- (a) Is not an employee, contractor, agent, manager, director or shareholder of a *WESM Member*;
  - (b) Is not a relative of a person, within the fourth civil degree of consanguinity

- or affinity, of an employee, contractor, agent, manager, director or shareholder of a *WESM Member*;
- (c) Is not an employee, contractor, agent, manager, director or shareholder of a company, affiliate or any other entity related to or associated with a *WESM Member*, where:
- (1) A related company or body, is a parent or holding company of the *WESM Member*, a subsidiary or affiliate of the *WESM Member* or a subsidiary of a holding company of the *WESM Member*; and
- (2) An associate is a person who is a director, manager or shareholder of that related company or entity or a relative of such a person;
- (d) Has not been employed by any electric power industry participant, or a company or body related to or associated with a *WESM Participant* (as defined in clause 1.4.2.7 (c)) within two years prior to the nomination date; and
- (e) Agrees not to be employed by and does not accept employment with any electric power industry participant, or a company or body related to or associated with a *WESM Member* (as defined in clause 1.4.2.7 (c)) within one year after the person ceases to be a *Director*.

#### 1.4.3 Appointment to the PEM Board

- 1.4.3.1 The *directors* of the *PEM Board* shall be appointed by the *DOE* in accordance with the required composition of the *PEM Board* as set out in clause 1.4.2, having regard to the expertise necessary for the *PEM Board* to carry out its functions and any relevant provisions of the Corporation Codes of the Philippines in relation to the appointment of directors.

1.4.3.2 With effect from the date on which the *Independent Market Operator* assumes the duties, functions and responsibilities of the *AGMO*, all new appointments or re-appointments of *Directors* and the *Chairperson* of the *PEM Board* are to be made in accordance with the required composition of the *PEM Board* as set out in clause 1.4.2.

#### 1.4.4 Voting Rights

1.4.4.1 Unless, expressly stated otherwise herein, provisions of the Corporation Code shall apply, provided that:

- (a) A majority of the total number of *Directors*, each having one vote, shall constitute a quorum for the transaction of business of the *PEM Board*.
- (b) Every decision of at least a majority of votes of *Directors* present in meeting shall be valid as a *PEM Board* act. If voting is equal, the *Chairperson* has a casting vote;
- (c) *Directors* cannot attend or vote by proxy at board meetings.

1.4.4.2 A *Director* or the sector or company that he represents, who:

- (a) Has a direct or indirect material pecuniary interest in a matter being considered, or is about to be considered by the *PEM Board*; and
- (b) The interest may, or may reasonably, be considered to be in conflict with the proper performance of the *Director's* duties in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts become known, or ought reasonably to have been known, shall disclose the nature of the interest at a meeting of the *PEM Board*.

1.4.4.3 A disclosure under clause 1.4.4.2 shall be recorded in the minutes of the meeting and, unless the *PEM Board* otherwise determines, the *Director*:

- (a) Shall not be present during any deliberation of the *PEM Board* in relation to that matter; and



(b) Shall not take part in any decision of the *PEM Board* in relation to that matter.

1.4.4.4 Notwithstanding clause 1.4.4.2, a *Director* appointed to the *PEM Board* as a representative of a sector of the Philippine electric power industry is permitted to take into consideration matters relevant to that sector of the industry when considering and deciding on matters before the *PEM Board*.

#### 1.4.5 Obligations of the *PEM Board*

1.4.5.1 The *PEM Board* shall at all times:

- (a) Fulfill its obligations under the *WESM Rules*;
- (b) Act in a manner that is consistent with the *WESM Rules*;
- (c) Perform all things reasonably necessary to contribute toward the achievement of the *WESM* and the *Act's* objectives;
- (d) Duly consider and take into account the provisions of the *WESM Rules*, when deciding whether or not to

approve any matter for which the *PEM Board's* approval or agreement is required under the *WESM Rules*;

(e) Promptly notify the *ERC* of all relevant information relating to potential breach with a recommendation on action to be taken; and

(f) Perform all other things that the *PEM Board* considers reasonably necessary to promote the *WESM* objectives and improve the operation of the *WESM* as well as the *WESM Rules*.

1.4.5.2 The following are the powers and duties of the *PEM Board*:

(a) Oversee and monitor the activities of the *Market Operator* and the *System Operator* to ensure that they fulfill their responsibilities under the *WESM Rules*, and acting in a manner consistent with the *WESM Rules*;

(b) Form Committees in accordance with clause 1.4.6;

- (c) Oversee and monitor the activities of the working groups established under clause 1.4.6 to ensure that they fulfill their responsibilities under and in accordance with the *WESM Rules*;
  - (d) Oversee and monitor the activities of *WESM Members* to ascertain and determine compliance or non-compliance with the *WESM Rules*; and
  - (e) Oversee the process by which changes to the *WESM Rules* are proposed and made in accordance with clause 8.2 and other clauses contained herein.
- spot market* in accordance with clause 1.6;
- (c) A Technical Committee to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code* in accordance with clause 1.7; and
  - (d) A *Rules Change Committee* to assist the *DOE* in relation to the revision and amendment of the *WESM Rules* in accordance with chapter 8.
  - (e) A *Dispute Resolution Administrator* to facilitate the mediation of the dispute between the parties to reach resolution within a specified period of time in accordance with the dispute resolution process under chapter 7.

## 1.5 THE PHILIPPINES ELECTRICITY MARKET AUDITOR

### 1.5.1 Responsibilities of the Auditor

#### 1.4.6 Formation of Committees

The *PEM Board* shall form working groups and appoint qualified personnel who shall act as the following:

- (a) The *PEM Auditor* to conduct audits of the operation of the *spot market* and of the *Market Operator* in accordance with clause 1.5;
- (b) A *Market Surveillance Committee* to monitor and report on activities in the

The *PEM Auditor* shall:

- (a) Conduct annual audits of the *Market Operator* and the *settlement system* and any other procedures, persons, systems or other matters relevant to the *spot market*;
- (b) Test and check any new items or versions of software provided by the *Market Operator* for use by *WESM Members*;

- (c) Review any procedures and practices which are covered by the *WESM Rules* at the direction of the *PEM Board*;
- (d) Recommend changes to the *WESM Rules* where the *PEM Auditor* detects deficiencies as a consequence of an audit, review, test, check or other form of review; and
- (e) *Publish* on the *market information website* the results of any findings and recommendations under this clause 1.5.1.

#### 1.5.2 Review of WESM Rules

The *PEM Auditor* may appoint a qualified team of auditors to carry out a review of the scheduling and *central dispatch* processes under the *WESM Rules*.

### 1.6 MARKET SURVEILLANCE COMMITTEE

#### 1.6.1 Appointment to the Market Surveillance Committee

1.6.1.1 The *PEM Board* shall appoint persons to form a *Market Surveillance Committee* in such number and with such skills and expertise, and on such terms and conditions, as the *PEM Board* reasonably deems to be appropriate, taking into consideration the nature of the obligations and functions of the *Market Surveillance Committee*, as set out in clause 1.6.2.

1.6.1.2 The members of the *Market Surveillance Committee* shall be independent of the Philippine electric power industry and the *Government*.

#### 1.6.2 Responsibilities of the Market Surveillance Committee.

The *Market Surveillance Committee* shall from time to time as necessary and appropriate, and whenever the *PEM Board* directs:

- (a) Monitor activities conducted by *WESM Participants* in the *spot market*;
- (b) Prepare periodic reports, which outline:
  - (1) Activities of *WESM Participants* in the *spot market*;
  - (2) Apparent or suspected incidents of *anti-competitive behavior* by any *WESM Participant*; and
  - (3) Matters concerning the operation of the *spot market* generally, which reports shall be submitted to the *PEM Board, the DOE and ERC* upon completion;
- (c) Assist the *PEM Board* to verify and assess:
  - (1) Applications for registration of *WESM Members* under the

*WESM Rules*; and

under chapter 8.

- (2) The eligibility of *WESM Members* to be registered under the *WESM Rules*;

## 1.7 TECHNICAL COMMITTEE

- (d) Assist the *PEM Board* to investigate:

- (1) Unusual or suspicious behavior or activities of *WESM Members* in the *spot market*;

- (2) Suspected or alleged breaches of the *WESM Rules* by *WESM Members*; and

- (3) Suspected or alleged *anti-competitive behavior*;

- (e) From time to time if the *Market Surveillance Committee* in its discretion deems necessary or appropriate, propose amendments to the *WESM Rules* in accordance with chapter 8 with a view to:

- (1) Improving the efficiency and the effectiveness of the operation of the *WESM*; and

- (2) Improving or enhancing the prospects for the achievement of the *WESM* objectives;

- (f) Assist the *Rules Change Committee* in relation to its assessment of proposals to amend the *WESM Rules*

- 1.7.1 Appointment to the Technical Committee.

The *PEM Board* shall appoint persons to form a Technical Committee, taking into consideration the nature of the obligations and functions of the Technical Committee, as set out in clause 1.7.2.

- 1.7.2 Responsibilities of the Technical Committee.

In addition to its obligations and functions under the *Grid Code* and *Distribution Code* (if any), the Technical Committee shall from time to time as necessary and appropriate, and whenever the *PEM Board* directs:

- (a) Monitor technical matters relating to the operation of the *spot market*;

- (b) Provide a report to the *PEM Board* on any matter of a technical nature relating to any *WESM Member* which in the reasonable opinion of the Technical Committee, causes:

- (1) That *WESM Participant* to be unable to comply with the *WESM Rules*; or

- (2) Unintended or distortionary effects to the operation of the *WESM*;

- (c) Assist the *PEM Board* by providing expertise in relation to:
  - (1) Information technology;
  - (2) *Metering* technology and *metering data*; and
  - (3) Any *other* matter of a technical nature relating to the *spot market*;
- (d) From time to time if the Technical Committee in its discretion deems necessary or appropriate, propose amendments to the *WESM Rules* in relation to technical matters, in accordance with chapter 8 with a view to:
  - (1) Improving the efficiency and the effectiveness of the operation of the *spot market*; and
  - (2) Improving or enhancing the prospects for the achievement of the *WESM* objectives; and
- (e) Assist the *Rules Change Committee* in relation to its assessment of proposals of a technical nature to amend the *WESM Rules* under chapter 8.

## 1.8 ENFORCEABILITY AND AMENDMENT OF THESE RULES

### 1.8.1 Enforceability

These Rules are enforceable in accordance with chapter 7.

### 1.8.2 Changes to the *WESM Rules*

Amendments to the *WESM Rules* shall be made in accordance with chapter 8.

## 1.9 PUBLIC CONSULTATION PROCEDURES

Where the *WESM Rules* identify matters that are subject to review or consultation in accordance with the public consultation procedures, the *PEM Board* shall ensure that, as a minimum, the following procedures are followed:

- (a) The *PEM Board* shall *publish* in at least two (2) newspapers of national circulation particulars of the matter to *WESM Participants* and other interested persons, inviting written submissions concerning the matter to be made by a specified date;
- (b) Where, in the reasonable opinion of the *PEM Board*, there is a diversity of views expressed in the written submissions received under clause 1.9(a), the *PEM Board* shall invite *WESM Participants* and other interested persons to a meeting or meetings at which those views may be presented and discussed. Non-members, who may be deemed interested persons may be invited to attend subject to the discretion of the *PEM Board*;
- (c) Following its consideration of the matter under consultation, the *PEM Board* shall prepare a report setting out:

- (1) The matter under consultation;
- (2) The *PEM Board's* decision in relation to the matter;

- (3) The reasons for the *PEM Board's* decision;
  - (4) The findings on material questions of fact, referring to evidence or other material on which those findings were based; and
  - (5) The procedures followed in considering the matter.
- (d) The *PEM Board* shall provide a copy of the report referred to in clause 1.9 (c) to:
- (1) The *DOE* and the *ERC* on completion of the report; and
  - (2) *WESM Participants* and interested persons on request.

## **CHAPTER 2 REGISTRATION**

### **2.1 SCOPE OF CHAPTER 2**

This chapter 2 sets out:

- (a) The categories of *WESM Members*;
- (b) The procedure for registration as a *WESM Member*, including registration as an *Intending WESM Member*;
- (c) The procedure for ceasing to be a *WESM Member*;
- (d) The procedure for suspension of a *WESM Member* and liability of *Deregistered WESM Members*; and
- (e) The procedure for recovery of the *Market Operator's* costs and expenses.

### **2.2 GENERAL**

#### 2.2.1 Scope of Application

Other than the *Market Operator*, the *WESM Rules* apply to:

- (a) *System Operator*;
- (b) *Generation Companies*;
- (c) *Ancillary Services Provider*;
- (d) *Distribution Utilities*;
- (e) *Suppliers*;
- (f) *Metering Services Providers*;
- (g) Bulk consumers/*End-users*; and
- (h) Other similar entities authorized by the *ERC* to become members of the *WESM*.

All of which are *WESM Participants*.

#### 2.2.2 Registration

##### 2.2.2.1 *Trading Participants*:

- (a) Shall register with the *Market Operator* under clauses 2.3.1, 2.3.2 or 2.4 as either a *Direct WESM Member* or an *Indirect WESM Member*; and
- (b) Are bound by the *WESM Rules* upon registration with the *Market Operator*.

2.2.2.2 *Network Service Providers* registered by the *Market Operator* under clause 2.3.4 are bound by the *WESM Rules*.

2.2.2.3 *Ancillary Services Providers*:

(a) Shall register with the *Market Operator* under clauses 2.3.5 or 2.4 as either a *Direct WESM Member* or an *Indirect WESM Member*; and

(b) Are bound by the *WESM Rules* upon registration with the *Market Operator*.

2.2.2.4 *Metering Services Providers* registered by the *Market Operator* under clause 2.3.6 are bound by the *WESM Rules*.

2.2.2.5 A *System Operator* registered by the *Market Operator* under clause 2.3.7 is bound by the *WESM Rules*. Other similar entities shall secure authorization from *ERC* to become eligible as members of the *WESM*.

### 2.2.3 Registration in Multiple Categories

If a person or an entity undertakes activities in two or more of the categories listed in clause 2.2.1, that person or entity shall register in each of those categories in accordance with the procedures in clause 2.5.

### 2.2.4 WESM Members

2.2.4.1 A *WESM Member* is a person or an entity registered with the *Market Operator* in

any one or more of the above categories, whether registered as a *Direct WESM Member* or an *Indirect WESM Member*, if applicable.

2.2.4.2 No person or entity shall be allowed to inject or withdraw electricity from the *grid* unless that entity or person is a registered member of the *WESM*. 2.2.4.3.

2.2.4.3 An *Intending Participant* is not considered to be a *WESM Member*.

## 2.3 CATEGORIES OF WESM MEMBER

### 2.3.1 Generation Company

2.3.1.1 A *Generation Company* with facilities connected to a *transmission* or *distribution system* shall register with the *Market Operator* as a *WESM Member*.

2.3.1.2 To register as a *WESM Member*, a *Generation Company* shall:

(a) Classify each of the *generating units* which form part of the *generating system* it owns, operates or controls or from which it otherwise sources electricity as either:

(1) A *scheduled generating unit*; or

(2) A *non-scheduled generating unit*; or

(3) A *new and renewable energy (NRE) generating unit with intermittent energy resource*;

(b) Satisfy the *Market Operator* that those *generating units* and the *connection points* for those *generating units* comply with the relevant technical requirements set out in the *WESM Rules*, the *Grid Code* and *Distribution Code*; and

(c) Satisfy the *membership criteria* specified in clause 2.3.3.4.

2.3.1.3 A *generating unit* or a group of *generating units* connected at a common *connection point* with a nameplate rating or a combined *nameplate rating* of greater than or one tenth of one percent (> 0.1%) of the peak load in a particular *reserve region* shall be classified as a *scheduled generating unit*.

2.3.1.4 A *generating unit* or a group of *generating units* connected at a common *connection point* with a nameplate rating and a combined *nameplate rating* of less than one tenth of one percent (< 0.1%) of the peak load in a particular *reserve region*, or less than ten percent (< 10%) of the size of interconnection facilities, whichever is lower, shall be classified as a *non-scheduled generating unit*, but may at its option be classified as a *scheduled generating unit*.

2.3.1.5 A *generating unit* or group of *generating units* connected at a common *connection point* whose energy resource is location specific and has a natural variability which renders the output unpredictable and the availability of the resource inherently uncontrollable shall be classified as an *NRE generating unit with intermittent energy resource*, but may at its option be classified as a *scheduled generating unit*.

2.3.1.6 A *Generation Company* is taken to be a *Scheduled Generation Company* only so far as its activities relate to any *scheduled generating unit*.



2.3.1.7 A *Scheduled Generation Company* is required to operate any *scheduled generating unit* in accordance with the scheduling and dispatch procedures described in chapter 3, within the *dispatch tolerances* specified in accordance with clause 2.3.3.5.

either as a *Direct WESM Member* or an *Indirect WESM Member* in respect of its activities relating to trading in the *spot market* subject to compliance with the relevant prerequisites set out in clauses 2.3 and 2.4.

## 2.3.2 Customer

2.3.2.1 A person or an entity that engages in the activity of purchasing electricity *supplied* through the *transmission system* or a *distribution system* to a *connection point* may register with the *Market Operator* as a *Customer*.

2.3.2.2 To register as a *Customer*, a person or an entity shall satisfy the membership criteria specified in clause 2.3.3.4.

2.3.2.3 A *Customer* shall comply with the scheduling and dispatch procedures described in chapter 3.

## 2.3.3 Trading Participant

2.3.3.1 A *Trading Participant* is a person or an entity registered with the *Market Operator* as either:

- (a) A *Customer*; or
- (b) A *Generation Company*, and may be registered

2.3.3.2 Subject to clauses 2.3.3.3 and 2.3.3.4, a *Trading Participant* registered as a *Direct WESM Member* is permitted to participate in the *spot market* for each category in which that *Trading Participant* is registered.

2.3.3.3 A person or an entity shall not undertake activities or participate in or in relation to the *spot market* unless the person or entity is a *Direct WESM Member* registered as a *Customer* or *Generation Company* with the *Market Operator*.

### 2.3.3.4 Membership Criteria

A person or an entity is not eligible to be registered as a *Trading Participant* unless that person or entity:

- (a) Is a resident in, or is permanently established in, the Philippines;

- (b) Is not under external administration (as defined in the [Philippines Companies Act/ Code]) or under a similar form of administration under any laws applicable to that person or entity in any jurisdiction;
  - (c) Is not immune from suit in respect of the obligations of a *WESM Member* under the *WESM Rules*;
  - (d) Is capable of being sued in its own name in a court of the Philippines; and
  - (e) Satisfies the *prudential requirements*.
- 2.3.3.5 Prior to registration of a *Trading Participant* in respect of a *scheduled generation unit* or *scheduled load* facility, an *Intending WESM Member* may seek a ruling from the *System Operator* with respect to the *dispatch tolerances* to be applied.
- 2.3.3.6 If no prior ruling is sought under clause 2.3.3.5, the *System Operator* shall make a ruling with respect to *dispatch tolerances* upon registration of that *Trading Participant*.
- 2.3.3.7 The *System Operator* may, at any time, review any ruling made under clause 2.3.3.5 or 2.3.3.6 in the light of further information or experience.
- 2.3.3.8 A *Scheduled Generation Company* may appeal to the *PEM Board* in respect of a ruling provided under this section that is relevant to that person or entity.
- 2.3.3.9 If at any time a *Trading Participant* ceases to be eligible to be registered as a *Trading Participant* in accordance with clause 2.3.3.4, that *Trading Participant* shall inform the *Market Operator* accordingly and, as soon as practicable after the *Market Operator* becomes aware that a *Trading Participant* is no longer eligible to be registered, the *Market Operator* shall issue a *suspension notice* in respect of that *Trading Participant* in accordance with clause 3.15.7.
- 2.3.4 Network Service Provider
- 2.3.4.1 The *TRANSCO* or the *Grid Owner* as defined in the *Grid Code* shall register with the *Market Operator* as a *Network Service Provider*.

- 2.3.4.2 A *Distribution Utility* shall register with the *Market Operator* as a *Network Service Provider*. the *reserve facilities* registered under clause 2.3.5.1 (a) (1) and as authorized by the *System Operator* under clause 2.3.5.3.
- 2.3.5 Ancillary Services Provider
- 2.3.5.1 A *Trading Participant* or *Network Service Provider* providing *ancillary services* in accordance with clause 3.3:
- (a) Shall register with the *Market Operator* as an *Ancillary Services Provider* in respect of:
- (1) Each *reserve facility* it operates;
- (2) Each *reserve category* it intends to provide from the *reserve facilities* registered under clause 2.3.5.1 (a) (1) and as authorized by the *System Operator* under clause 2.3.5.3; and
- (3) The *reserve facility category* applicable to the *reserves* intended to be provided by each of
- (b) May be registered either as a *Direct WESM Member* or an *Indirect WESM Member* in respect of its activities relating to the provision of *ancillary services*, subject to satisfying the relevant prerequisites set out in clause 2.3.
- 2.3.5.2 Only an *Ancillary Services Provider* registered as a *Direct WESM Member* may enter into an *ancillary services agreement* with the *System Operator* under clause 3.3.3.
- 2.3.5.3 Prior to the registration of a *Trading Participant* or a *Network Services Provider* as an *Ancillary Services Provider* eligible to provide *reserves* in accordance with clause 2.3.5.1, the *System Operator* shall:
- (a) Certify that the relevant *reserve facility* is capable of providing the *reserve category* for

which registration is sought, in accordance with the *Grid Code* and *Distribution Code*;

- (b) Classify each *reserve facility* for which registration is sought into a *reserve facility category* in respect of each *reserve category* that is intended to be provided by that *reserve facility*;
- (c) Determine to which *reserve region* each *reserve facility* for which registration is sought may belong, depending on the ability of that *reserve facility* to apply *reserve* to meet the corresponding *locationally specific reserve* requirement; and
- (d) Provide written authorization to the *Market Operator* which sets out the relevant *information* determined under clauses 2.3.5.3 (a), (b) and (c).

2.3.5.4 A *Trading Participant* and a *Network Services Provider* shall not be paid or compensated for providing *ancillary services* or *reserves* unless:

- (a) Registered as an *Ancillary Services Provider* in respect of the relevant *facility* in accordance with clause 2.3.5.1; or

- (b) Registered as an *Ancillary Services Provider* for provision of the relevant *reserve category* in that relevant *reserve region* in accordance with clause 2.3.5.1.

### 2.3.6 Metering Services Provider

2.3.6.1 A person or an entity intending to provide metering services in accordance with chapter 4 shall secure an authorization from the *ERC*.

2.3.6.2 A person or an entity authorized by the *ERC* to provide *metering services* shall register with the *Market Operator* as a *Metering Services Provider*.

2.3.6.3 Initially, the *TRANSCO* shall provide the services required of the *Metering Services Provider*, but this will not exclude other entities from doing the same, provided they meet the requirements of chapter 4.

### 2.3.7 System Operator

The *System Operator* of the TRANSCO shall register with the *Market Operator* as a *System Operator*.

## 2.4 INDIRECT WESM MEMBERS

A person or an entity who wishes to indirectly trade in the spot market shall register with the *Market Operator* as an *Indirect WESM Member*. However, an *Indirect WESM Member* may only transact through a *direct WESM Member*.

## 2.5 APPLICATIONS FOR REGISTRATION

### 2.5.1 Application process

An application for registration shall be submitted to the *Market Operator* in the form prescribed by the *Market Operator* and shall be accompanied by a registration fee *published* by the *Market Operator*.

### 2.5.2 Prerequisites for applicants

If an applicant applies for registration either as a *Direct WESM Member* or as an *Indirect WESM Member* that applicant shall:

- (a) Have an appropriate and current *authorization* required under the *Act*; and
- (b) Satisfy the relevant requirements of clause 2.3, for *Direct WESM Members*.

### 2.5.3 Further information to assess application

2.5.3.1 Within five *business days* of receiving an application, the *Market Operator* shall advise

the applicant of any further information which the *Market Operator* reasonably considers to be required to enable the *Market Operator* to properly assess the application.

2.5.3.2 If the *Market Operator* has not received any further information as required under clause 2.5.3.1 within the next fifteen *business days*, the *Market Operator* may treat the application as withdrawn.

2.5.3.3 If the *Market Operator* incurs additional costs as a result of requesting and assessing any further information required under clause 2.5.3.1, the *Market Operator* may require the applicant to pay the actual amount incurred to cover those additional costs.

### 2.5.4 Approval of applications

If an application for registration has been received by the *Market Operator* and:

- (a) All relevant prerequisites have been satisfied;
- (b) The applicant is eligible to be registered in the category or categories in which registration is sought; and
- (c) The *Market Operator* reasonably considers that

the applicant will be able to comply and maintain compliance with the *WESM Rules*,

then subject to clause 2.5.5, the *Market Operator* shall approve the application and register the applicant in that category or categories.

#### 2.5.5 Notice of approval of application

2.5.5.1 If the *Market Operator* approves an application under clause 2.5.4, the *Market Operator* shall send written notice of approval to the applicant within fifteen *business days* from receipt of:

- (a) The application under clause 2.5.1; or
- (b) The additional information or fees, if further information or fees are required under clause 2.5.3.

2.5.5.2 The registration of the applicant shall take effect on the date specified in the notice of approval which shall be a date not more than seven days after the date on which the *Market Operator* sends the notice of approval under clause 2.5.5.1.

#### 2.5.6 Notice of non-approval of application

2.5.6.1 If the *Market Operator* does not approve an application for registration in a category to which an application relates, the *Market Operator* shall send within fifteen (15) business days written notice to the applicant advising the applicant that the application is not approved and the *Market Operator* shall give reasons for its decision.

2.5.6.2 The *ERC* shall be provided a copy of such written notice within five (5) business days after issuance to the applicant.

2.5.6.3 If an application for registration is rejected by the *Market Operator* under clause 2.5.6.1 an applicant may:

- (a) Rectify the shortcomings in his previous application as notified by the *Market Operator* as being the reasons for the application being unsuccessful and re-submit an application for registration; or
- (b) Refer the matter for resolution as a dispute under clause 7.3.

#### 2.5.7 Market Operator to maintain a list

The *Market Operator* shall *publish* and keep current a list of registered *WESM Members*, the categories in which they are registered and details of the current status of applications to become a *WESM Member* in accordance with clause 5.2.3.

## 2.6 CEASING TO BE A WESM MEMBER

### 2.6.1 Notifying the Market Operator

If a person or an entity wishes to cease to be registered:

- (a) In any one or more categories of *WESM Member* set out in clause 2.3; or
- (b) As an *Indirect WESM Member*,

It shall notify the *Market Operator* in writing.

### 2.6.2 Date of cessation

In a notice given under clause 2.6.1, a *WESM Member* shall specify:

- (a) A date upon which it wishes to cease to be registered, which date should not be less than thirty (30) *business days* after the date on which the *WESM Member* sends the notice; and
- (b) The category or categories in which the *WESM Members* no longer wishes to be registered.

### 2.6.3 Notifying all WESM Members

On receipt of a notice under clause 2.6.1, the *Market Operator*

shall notify all *WESM Members* that the person or entity who gave the notice shall cease to be registered as a *WESM Member* in the relevant category and the date on which that will occur.

### 2.6.4 Market Operator notification of cessation

If the *Market Operator* provides notice under clause 2.6.3 that a *WESM Member* shall cease to be registered in the relevant category on a specified date, that *WESM Member* shall cease all activities relevant to that category that it was permitted to undertake before it ceased to be registered as a *WESM Member* in that relevant category, including but not limited to trading in the *spot market* if that *WESM Member* ceases to be registered as a *Trading Participant*, from that date.

## 2.7 SUSPENSION

### 2.7.1 Grounds for Suspension

The *Market Operator* may issue a suspension notice to *WESM Participants* based on the following grounds:

- (a) Breach of the *WESM Rules* subject to clause 7.2.2; and
- (b) Payment default subject to 3.14.11.

### 2.7.2 Effect of a suspension notice

If a *Trading Participant* who is either a *Direct WESM Member* or an *Indirect WESM Member* receives a *suspension notice* from the *Market Operator* in

accordance with any provision of the *WESM Rules*, that *Trading Participant* is suspended from participation in the *spot market* unless and until the *Market Operator* declares the *suspension notice* to be revoked in accordance with clause 3.15.7.

## 2.8 DEREGISTRATION

### 2.8.1 Deregistration of a Trading Participant

2.8.1.1 If the *Market Operator* issues a deregistration notice to any *Trading Participant* under the deregistration process, the *Trading Participant* is deemed to be deregistered as a *Trading Participant* from the date specified in the deregistration notice.

2.8.1.2 A *Trading Participant* who is deregistered shall not be allowed to reregister within a certain prescriptive period and until it has demonstrated that such infraction will not occur again.

### 2.8.2 Obligations and liabilities following deregistration.

Notwithstanding that a person or an entity is no longer registered as a *WESM Member* for any reason including ceasing to be a *WESM Member* or being suspended from the *spot market*, that person's or entity's obligations and liabilities which arose under the *WESM Rules* prior to the date on

which that person or entity was deregistered remain unaffected by the deregistration.

### 2.8.3 Deregistration procedure development

Prior to *spot market commencement date*, the *Market Operator* shall develop procedures for deregistration including grounds for deregistration and prescriptive period referred to in clause 2.8.1.2 to be approved by the *PEM Board*.

## 2.9 INTENDING WESM MEMBERS

### 2.9.1 Registration as an Intending WESM Member

Any person or entity who intends to register as a *WESM Member* may register with the *Market Operator* as an *Intending WESM Member* if that person or entity can satisfy the *Market Operator* of its bona fide intent to commence an activity, within a reasonable timeframe, which would entitle or require that person or entity to be registered as a *WESM Member* once that activity is commenced.

### 2.9.2 Applications for registration

Applications for registration as an *Intending WESM Member* shall be submitted to the *Market Operator* in the form prescribed by the *Market Operator* and shall be accompanied by the registration fee (if any) *published* by the *Market Operator* from time to time.

### 2.9.3 Notice of cessation of registration



The *Market Operator* may from time to time require an *Intending WESM Member* to satisfy the *Market Operator* that it continues to meet the criteria for registration in clause 2.9.1 and if the *Intending WESM Member* is unable to satisfy the *Market Operator* that it remains entitled to be registered as an *Intending WESM Member*, then the *Market Operator* shall send written notice to the relevant *Intending WESM Member* to advise the relevant *Intending WESM Member* that it will cease to be registered as an *Intending WESM Member* on the date specified by the *Market Operator* in that notice.

#### 2.9.4 Activities of Intending WESM Members

An *Intending WESM Member* is taken to be an *Intending WESM Member* only insofar as its activities relate to its intention to commence an activity that would entitle or require that person or entity to be registered as a *WESM Member*.

#### 2.9.5 Rights and obligations of Intending WESM Members

To the extent relevant and applicable, an *Intending WESM Member* acquires only the following rights and obligations under the *WESM Rules*:

- (a) The right to obtain information that would be made accessible to *WESM Members* in the category in which the *Intending WESM Member* intends to be registered;

- (b) The right to refer matters for resolution according to the dispute resolution process in clause 7.3; and
- (c) The obligation to keep certain information confidential in accordance with clause 5.3.

## 2.10 MARKET FEES

### 2.10.1 Imposing Market Fees

The cost of administering and operating the *WESM* shall be recovered by the *Market Operator* through a charge imposed on all *WESM Members* or *WESM* transactions, provided such charge shall be filed by the *Market Operator* with the *ERC* for approval, consistent with the *Act*.

### 2.10.2 Structure and Level of Market Fees

2.10.2.1 Prior to the commencement of the *spot market*, the *Market Operator* shall develop the structure and level of *market fees* in consultation with *WESM Participants*.

2.10.2.2 In developing the structure and level of *market fees*, the *Market Operator* shall take into consideration the manner in which it intends to charge each category of *WESM Member*, and whether that charging proposal is reasonable given the relative involvement of each category of *WESM*

*Member* in the *spot market*.

2.10.2.3 Upon the approval of the *PEM Board*, the *Market Operator* shall file the proposed structure and level of market fees with the *ERC* for approval.

### 2.10.3 Guiding Principles

The structure of *market fees* should, to the extent practicable, be consistent with the following principles:

- (a) The structure of *market fees* should be transparent;
- (b) *Market fees* shall consider the budgeted revenue requirements for the *Market Operator* and the *PEM Board* determined under clause 2.11; and
- (c) The structure and level of *market fees* should not favor or discriminate against a category or categories of *WESM Member*.

### 2.10.4 Components of Market Fees

The components of the *market fees* shall include, but are not limited to:

- (a) Registration fees, comprising an annual fee payable by each *WESM Member* for the category or categories in which they are registered;
- (b) *Metering fees* to recover the *Market Operator's* budgeted revenue requirements for the collection, storage and

processing of *metering data*;

- (c) Billing and *settlement fees*, to recover the *Market Operator's* budgeted revenue requirements for providing the billing and *settlements* service, as described in chapter 3;
- (d) Administration fees, to recover the remainder of the *Market Operator's* budgeted revenue requirements not covered by (a), (b), (c) and (d); and
- (e) Costs reasonably incurred by the *PEM Board* and the committees and working groups that the *PEM Board* appoints under the *WESM Rules*.

### 2.10.5 Publication of Market Fees Structure

Upon the approval of *ERC*, the *Market Operator* shall *publish* the structure and level of *market fees* and the methods used in determining the structure prior to commencement of the *spot market*.

## 2.11 BUDGET

### 2.11.1 Submission of annual statements and other documents

2.11.1.1 No later than four months prior to the start of each *financial year*, the *Market Operator* shall submit an annual statement of expected income and expenses to the *PEM Board* for approval, setting out,

among others, the following:

- (a) Budgeted expenditures and revenues for the next *financial year* for the *Market Operator* and the *PEM Board*;
- (b) Amount of *market fees* proposed to be charged for the next *financial year*; and
- (c) Method used in determining the amount of proposed *market fees* in respect of each of the *Market Operator's* activities and the *PEM Board's* activities referred to in clause 2.10.4 including but not limited to the *Market Operator's* estimated costs and expenses associated with those activities.

2.11.1.2 The *Market Operator* shall submit to the *ERC* a copy of the annual statement approved by the *PEM Board* under clause 2.11.1.1.

## 2.12 FINANCIAL YEAR REPORT

2.12.1 Market Operator to prepare report

2.12.1.1 No later than four months after the end

of each *financial year*, the *Market Operator* shall prepare an annual report, setting out, among others, the following:

- (a) The budgeted and actual expenditures and revenues of the *Market Operator* and the *PEM Board*, clearly categorizing each group of expenses and revenues into the key functions and activities undertaken by the *Market Operator* and the *PEM Board*; and
- (b) An explanation of any significant variation between budgeted and actual expenditures and revenues.

In respect of the previous *financial year*.

2.12.1.2 The annual report prepared under clause 2.12.1.1 shall be duly certified by an independent auditor and approved by the *PEM Board*.

2.12.2 Providing copy of report

The *Market Operator* shall provide a copy of the annual report prepared under clause 2.12.1 to:

- (a) The *ERC* and the *DOE* on completion of the report;
- (b) The *PEM Board*; and
- (c) *WESM Members* and interested entities on request.

### **CHAPTER 3 THE MARKET**

#### **3.1 SCOPE OF CHAPTER 3**

This chapter 3 sets out the rules which govern operation of the *spot market*, and related matters, including but not limited to:

- (a) The definition of the market *network model*, *pricing zones*, *reserve categories* and *reserve regions*, *trading interval* and *timetable*;
- (b) The procedures to be followed by *WESM Members* in submitting offers, *demand bids* and data into the *spot market*;
- (c) The structure and use of the *market dispatch optimization model*;
- (d) The procedures for provision of *ancillary services* and for determining payment for those services;
- (e) The procedures for preparing *week ahead projections* and *day ahead projections*;
- (f) The procedures for *scheduling and dispatch*, *load shedding* and *excess generation*;
- (g) The determination of *market prices*;
- (h) The requirement relating to the *publication* of information, in accordance with the *timetable*;

- (i) The procedures for determining *settlements amounts* and for paying and receiving *settlements*;
- (j) The determination of *prudential requirements*; and
- (k) The procedures for supporting *transmission rights*.

#### **3.2 MARKET NETWORK MODEL, TRADING NODES, AND PRICING ZONES**

The *price determination methodology* contained in this *WESM Rules* shall be subject to the approval of *ERC*.

##### **3.2.1 Market Network Model**

3.2.1.1 The *Market Operator* shall maintain and publish a *market network model*, which will be used for the purpose of central scheduling and dispatch, pricing and settlement.

3.2.1.2 The *market network model* shall represent fairly, and in a manner which will facilitate consistent and reliable operation of the power system:

- (a) The *transmission network* under the control of the *System Operator*, and
- (b) Such other aspects of the *power system* which, when *connected*, may be capable of materially

affecting *dispatch* of *scheduled generating units* or pricing within the *spot market*.

conditions, within the relevant *market* time frames, as advised by the *System Operator* under clause 3.5.3.

3.2.1.3 The *market network model* may contain such simplifications, approximations, equivalencies or adaptations as may facilitate the *dispatch*, pricing, or *settlement* processes.

3.2.1.4 Where appropriate, the *Market Operator* or the *System Operator* may recommend alterations to the *market network model*, so as to maintain:

- (a) The relationship between the *market network model* and the *transmission network*; and
- (b) Consistency with *market* requirements, in accordance with clauses 3.2.1.2 and 3.2.1.3.

3.2.1.5 Any alteration recommended under clause 3.2.1.4 shall be approved by the *PEM Board*.

3.2.1.6 The *Market Operator* shall continuously adapt or adjust the representation of the *market network model* to accurately reflect *power system*

### 3.2.2 Market Trading Nodes

3.2.2.1 A *market trading node* shall be defined for each *node* in the *market network model* that lies at the boundary between a *network* operated by the *System Operator* and any apparatus, *network* or equipment used to generate, convey or control the conveyance of *energy* and operated by a person other than the *System Operator*.

3.2.2.2 Each *market trading node* defined under clause 3.2.2.1 shall:

- (a) Represent a *metering installation* capable of measuring all relevant flows of *energy* into, or out of, the *power system* operated by the *System Operator* at that *market trading node*;
- (b) Be associated with a *Trading Participant* who is required to pay, or who shall be paid, for that *metered* quantity of *energy*, or any adjusted

quantity calculated in accordance with clause 3.13.7, and shall be classified either as:

- (c) A *generator node* if the *node* represents a registered *generating unit* or *generating system* directly connected to a *network* operated by the *System Operator* at that *market trading node*; or
- (d) A *customer node*.

3.2.2.3 If a *node* in the *market network model* for which *settlement* is required lies at the interface between two *networks*, or pieces of apparatus or equipment, used to generate, convey or control the conveyance of *energy* and both are operated by persons other than the *System Operator* then a pair or pairs of *market trading nodes* shall be defined for that *node* and:

- (a) Each pair of *market trading nodes* shall represent a *metering installation* capable of measuring all relevant flows of *energy* between the relevant *networks*, apparatus or equipment at that *market network node*;

- (b) One *node* from this pair of *market trading nodes* shall be classified as a *generator node* and the other as a *customer node* depending on the normal direction of *energy* flow, prior to any adjustment for *bilaterals* under clause 3.13.7; and

- (c) Each of those *market trading nodes* shall be associated with a *Trading Participant* who is required to pay, or who shall be paid, for that *metered quantity* of *energy*, or any adjusted quantity calculated in accordance with clause 3.13.7.

3.2.2.4 The *Market Operator* shall maintain, *publish*, and continuously update a register of *market trading nodes*, defined in accordance with clause 3.2.2.1 so as to accurately reflect changes in the *market network model* and the *WESM Member* responsible for each *market trading node*.

### 3.2.3 Customer Pricing Zones

3.2.3.1 The *Market Operator* shall maintain and *publish* the *customer pricing zones* to be used

for the settlement of energy for *Customers*.

3.2.3.2 Customer nodes may be grouped into a *customer pricing zone*. All *Customers* within a *customer pricing zone* shall face the same price for electricity consumed.

3.2.3.3 As long as *customer pricing zones* are employed, the *Market Operator* shall conduct a periodic review and evaluation of existing *customer pricing zones*, and shall:

(a) Submit revised *customer pricing zones*, to the *PEM Board* or approval; and

(b) *Publish* any revised *customer pricing zones* approved by the *PEM Board*.

3.2.3.4 The *Market Operator* shall, in consultation with *WESM Participants*, continuously review the procedures for determining the *market network model*, *market trading nodes*, and *customer pricing zones* set out in this chapter 3 and, to the extent the *Market Operator* considers it to be reasonably necessary to promote the *WESM objectives*, the *Market Operator* may

recommend changes to these procedures in accordance with the rule change process set out in chapter 8.

### 3.3 ANCILLARY SERVICES

#### 3.3.1 Introduction

3.3.1.1 *Ancillary services* are services that are essential to the management of *power system security*, that facilitate orderly trading in electricity and ensure that electricity supplies are of an acceptable quality.

3.3.1.2 Without limitation, *ancillary services* may include

(a) The provision of sufficient *regulating reserve* to meet fluctuations in *load* occurring within a *trading interval*;

(b) The provision of sufficient *contingency reserve* to maintain *power system frequency*;

(c) The provision of *dispatchable reserve* available to respond to a *re-dispatch* performed during a *trading interval*, on either a regular or an ad hoc basis;

(d) The provision of *reactive support* to guard against *power system* failure; and

(e) The provision of *black start capability* to allow restoration of *power system* operation after a complete failure of the *power system* or part of the *power system*.

3.3.1.3 The requirements for *ancillary services* are to be met in the following ways:

(a) By the *System Operator*, in consultation with the *Market Operator* and *WESM Participants*, setting minimum standards in relation to technical performance specified in the *Grid Code* and *Distribution Code* which requires some level of *ancillary services* to be provided by *Ancillary Services Providers*;

(b) By the *System Operator* purchasing *ancillary services* in accordance with clause 3.3.3.

3.3.2 Ancillary Services Contracting by the System Operator

3.3.2.1 The *System Operator* shall use reasonable endeavors to ensure that sufficient facilities are available and operable to provide for:

(a) The maintenance or restoration of *power system security* under *emergency* conditions;

(b) The restoration of all or any part of the *power system* to its satisfactory operating state, following an *emergency*, threat to *system security* or *force majeure event*; and

(c) The availability, at all times, of the number of independent power sources able to provide *black start-up facilities*, determined in accordance with the procedures developed by the *Market Operator* to ascertain the quantities of *ancillary services* which the *System Operator* shall purchase.

3.3.2.2 The *System Operator* shall use reasonable



endeavors to enter into *ancillary services agreements* to provide sufficient *ancillary services* to meet the requirements of clause 3.3.2.1, subject to clause 3.3.3.

### 3.3.3 Ancillary Services Agreements

3.3.3.1 The *System Operator* shall arrange for the provision of adequate *reserves* for each region in accordance with clause 3.3.3.2.

3.3.3.2 The *System Operator* shall arrange for the provision of adequate *ancillary services* for each region either:

(a) By competitive tendering process, administered by the *Market Operator*, whereby a number of *Ancillary Services Providers* can provide a particular category of *ancillary services*; or

(b) By negotiating contracts directly with an *Ancillary Services Provider* who is a *Direct WESM Member*, where only one *Ancillary Services Provider* can provide the required *ancillary services*; or

(c) Where applicable, by competitive *spot market* trading in accordance with clause 3.3.4.

3.3.3.3 The *System Operator* shall negotiate any *ancillary services agreements* with *Ancillary Services Providers* who are *Direct WESM Members* on commercial terms acceptable to the parties and at arms length, subject to clause 3.3.3.2.

3.3.3.4 Payment for *ancillary services* purchased under an *ancillary services agreement* may include:

(a) A payment for both contracted capabilities and a measure of the *ancillary services* provided;

(b) A demonstrable *spot market* opportunity cost, that is lost *spot market* revenue or opportunity costs incurred by the *Ancillary Services Provider* as a result of providing the *ancillary services*;

(c) A fair return to the *Ancillary Services Provider* in respect of any additional direct

costs associated with providing the *ancillary service*;

*Administrator* in accordance with clause 7.3.

(d) When applicable, subject to clause 3.3.4.1, a price for that *ancillary service* established by a competitive *spot market* mechanism.

### 3.3.4 Reserve Market Arrangements

3.3.4.1 When reasonably feasible, the *Market Operator*, in coordination with the *System Operator*, shall establish and administer a *spot market* for the purchase of certain *reserve categories*.

3.3.4.2 The *reserve categories* to be traded in the *spot market* shall include:

(a) *Regulating reserve*, being the ability to respond to small fluctuations in system frequency including but not limited to fluctuations caused by *load* fluctuations;

(b) *Contingency reserve*, being the ability to respond to a significant decrease in system frequency including but not limited to a decrease in system frequency in an interconnected AC network as a result of a credible *contingency* affecting one (or more) *Generation Companies* within that *network*, or *transmission* flows

3.3.3.5 Payments for *ancillary services* that are provided are to be made by the *Market Operator* via the *settlements* system in accordance with clause 3.13.14.

3.3.3.6 *Ancillary services agreements* shall contain a provision pursuant to which the capability of the relevant *Ancillary Services Provider* to provide *ancillary services* shall be demonstrated from time to time to the satisfaction of the *System Operator* according to the standard test procedures established under the *Grid Code* and *Distribution Code*.

3.3.3.7 Any dispute between the *System Operator* and the *Ancillary Services Provider* in relation to the determination of a payment under an *ancillary services agreement* shall be determined by the *Dispute Resolution*

into that *network*;  
and

- (c) Such other *reserve categories* as may from time to time be proposed by the *Market Operator*, in consultation with the *System Operator*, and with *WESM Members*, and approved by the *PEM Board*.

### 3.3.5 Ancillary Services Cost Recovery

3.3.5.1 The *System Operator* shall maintain and *publish reserve cost recovery zones* within which *reserve cost recovery charges* may be recovered to meet each locationally specific requirement.

3.3.5.2 The costs of *ancillary services* are to be recovered through the *settlement* amounts calculated by the *Market Operator* under clause 3.13.10:

- (a) In accordance with the *cost recovery formula* to be developed by the *System Operator* for the categories of *reserve* which are defined in clause 3.3.4.2; and
- (b) From those *WESM Members* or others on whose behalf the *System*

*Operator* is deemed to purchase each *ancillary service*, in proportion to the benefits which are considered to be derived by those *WESM Members*, in respect of *ancillary services* not included in clause 3.3.5.2 (a).

3.3.5.3 The costs of providing each locationally specific *reserve* requirement shall be allocated by the *Market Operator* to those *Trading Participants* in the relevant *reserve cost recovery zone* in the form of *reserve cost recovery charges* to be determined in accordance with the principles set out in clause 3.3.5.4.

3.3.5.4 When allocating *reserve cost recovery charges* to *Trading Participants* in a particular *reserve cost recovery zone* as published in clause 3.3.5.1 the *Market Operator* may recover:

- (a) The cost of *regulating reserve*, in each *reserve cost recovery zone*, from:
  - (1) *Customers* with *load facilities* connected in that *reserve cost recovery zone*,

under a formula which shall account for both the relative size of the *customer loads*, and the degree to which they contribute to deviations from their schedule within the *trading interval*; and

(2) *Scheduled Generation Companies* with *generating systems connected* in that *reserve cost recovery zone* under a formula which shall account for both the relative size of the *generating systems*, and the degree to which they deviate from *dispatch instructions*,

(b) The cost of *contingency reserve*, in each *reserve cost recovery zone*, from:

(1) *Generation Companies* with *generating systems connected* in that *reserve cost recovery zone*; and

(2) *Network Service Providers* serving that *reserve cost recovery zone*,

under a formula which accounts for the relative size of the relevant *generating system* and *distribution network*, their *reliability*, and the impact which failure may have on conditions within that *reserve cost recovery zone*.

### 3.3.6 Provision of Ancillary Services

3.3.6.1 An *Ancillary Services Provider* shall not unreasonably refuse to provide *ancillary services*.

3.3.6.2 When justifiable in terms of *power system security*, the *System Operator* may direct any *Ancillary Services Provider* to provide an *ancillary service* in accordance with the *Grid Code*.

### 3.3.7 Approval, Periodic Review and Evaluation of Ancillary Service Arrangements

3.3.7.1 The *System Operator* of *TRANSCO* shall charge user fees for *ancillary services* to all electric power industry participants or self-generating entities connected to the grid.

Such fees shall be fixed by the *ERC* after due notice and public hearing.

3.3.7.2 The *System Operator*, in consultation with *Market Operator* and *WESM Participants* shall conduct a periodic review and evaluation of the following:

(a) *Ancillary services categories, ancillary services arrangements and ancillary services cost recovery formula;*

(b) *Reserve categories, reserve regions, and locationally specific reserve requirements; and*

(c) *Procedures developed under this clause 3.3 with a view to refining these procedures to promote the WESM objectives and better meet the requirements of the power system operation.*

3.3.7.3 Any proposed changes to the *ancillary service categories, ancillary services arrangements, ancillary services cost recovery formula, reserve categories, reserve regions* or locationally specific *reserve requirements*

that will affect the fees of *ancillary services* shall be filed by the *System Operator* of *TRANSCO* with the *ERC* for approval.

3.3.7.4 The *System Operator* shall continuously adjust the *reserve effectiveness factors* for each *reserve facility category*, and the quantum of *reserve* to be scheduled to meet each locationally specific *reserve requirement* by the *market dispatch optimization model*, so as to accurately reflect the *power system* under existing or future conditions, within the relevant *market* time frames, as advised by the *System Operator* under clause 3.5.3.1.

3.3.7.5 Any proposed changes in the procedures reviewed under this clause 3.3.7 shall be approved by the *PEM Board* in accordance with the rule change process set out in chapter 8.

### **3.4 MARKET TRADING INTERVAL AND TIMETABLE**

#### **3.4.1 Trading Intervals**

3.4.1.1 For the purpose of trading in *energy* and *ancillary services*, a *trading interval* is one (1) hour, commencing on the hour.

3.4.1.2 Only *energy* shall be traded during the *interim WESM*. Trading in *ancillary services* shall be implemented upon commencement of the *spot market for ancillary services* established under clause 3.3.4.

*Member* during the operation of the *spot market*.

### 3.4.2 Timetable

3.4.2.1 The *Market Operator* shall operate the *spot market* in accordance with the *timetable*.

3.4.2.3 The *Market Operator* shall maintain, *publish* and continuously update the *timetable*.

3.4.2.2 The *timetable* shall include the schedule and procedure for the following:

3.4.2.4 Any proposed changes in the *timetable* and related procedures shall be approved by the *PEM Board* in accordance with the rule change process set out in chapter 8.

(a) Determining and *publishing week ahead projections* including precise specification of the *market horizon* to be used for such projections;

## 3.5 SUBMISSION OF OFFERS, BIDS, AND DATA

### 3.5.1 Communications of Offers and Bids

Each *Trading Participant* shall provide to the *Market Operator* the information required under this clause 3.5 in accordance with the *electronic communication procedures*.

(b) Determining and *publishing day ahead projections* including precise specification of the *market horizon* to be used for such projections;

### 3.5.2 Network Service Provider Data

3.5.2.1 Each *Network Service Provider* shall submit to the *System Operator* *standing network data* relating to all network elements which are under that *Network Service Provider's* control and included in the *market network model*, in accordance with clause 3.5.2.4 and the *Grid Code* and *Distribution Code*.

(c) Submitting offers, bids and data; and

3.5.2.2 If there is any material long term change in the

(d) If necessary, for any other action to be taken by the *Market Operator*, the *System Operator*, or any *WESM*

status or configuration of a *network* under the control of a *Network Services Provider*, the *standing network data* relevant to that *network* shall be revised by the relevant *Network Service Provider*, and submitted to the *System Operator*.

*System Operator* of any circumstances which threaten a significant probability of material adverse change in the state of its *network* in any *trading interval* of any *trading day* in the current *week-ahead market horizon*.

3.5.2.3 Each *Network Service Provider* shall submit period-specific *network data* variations to the *System Operator* as soon as any material change in previously submitted *network data* becomes apparent with respect to the expected state of any of its *networks* in any *trading interval* of any *trading day* in the current *week-ahead market horizon*.

3.5.3.1 The *System Operator* shall submit to the *Market Operator* standing *network data* relating to all *network elements* which are under the *Network Service Provider's* control and included in the *market network model*, in accordance with the *timetable*.

3.5.2.4 The *standing network data* and any variations to that data submitted in accordance with clause 3.5.2.3 shall be provided by *Network Service Providers* in a form which allows the *System Operator* to readily derive and verify the information specified in Appendix A2, as it may pertain to any *trading interval* of any *trading day* in the *week-ahead market horizon*.

3.5.3.2 Where necessary, the *System Operator* shall, in accordance with the *timetable*, promptly advise the *Market Operator* to:

3.5.2.5 Each *Network Service Provider* shall immediately advise the

(a) Vary the *market network model representation* employed for any *trading interval* in the current *week-ahead market horizon* to take account of information received from *Network Service Providers*; and

(b) Apply, or vary, any *system security*

constraints, *overriding constraints* or *reserve requirements constraints* to be applied in any *trading interval* in the current *week-ahead market horizon* to take account of current, or projected, system conditions.

3.5.3.3 In determining whether it is reasonably necessary to advise the *Market Operator* under clause 3.5.3.2, the *System Operator* shall take into consideration its obligations with respect to maintaining *system security* in accordance with the *WESM Rules*, the *Act*, the *Grid Code* and *Distribution Code*, or any other relevant regulatory instruments.

3.5.3.4 In acting on such advice, the *Market Operator* shall take full account of its obligations to *WESM Members* with respect to maintaining the integrity of the market, and the *market network model*, as defined by the *WESM Rules*, the *Act*, or any other applicable regulatory instruments.

3.5.3.5 In accordance with the *timetable*, any revision under clause 3.5.3.2 to the system representation or

constraints to be employed with respect to any market *trading interval* shall take effect the next time a *market dispatch optimization model* run is initiated.

3.5.3.6 The *System Operator* shall advise the *Market Operator* of any circumstances which threaten a significant probability of material adverse change in the state of the *network*, or system, in any *trading interval* of any *trading day* in the current *week-ahead market horizon*.

#### 3.5.4 Load Forecasting

3.5.4.1 The *Market Operator* shall prepare the *net load forecasts* for each *market trading node* at which *load* can be expected to occur.

3.5.4.2 Each *net load forecast* shall be prepared in such a way as to represent the *net load* to be met by *scheduled generation*, including losses occurring outside the system represented by the *market network model*, but excluding any *scheduled load*, and less:

(a) *Non-scheduled generation*, and

(b) Generation from *NRE generating units* with



*intermittent energy resource.*

3.5.4.3 The *unrestrained net load forecast* for any *trading interval* shall be prepared so as to represent the *net load* as it would be, or would have been, in the absence of *load shedding*.

3.5.4.4 If *load shedding* is expected to occur in any *trading interval*, a *restrained net load forecast* for that *trading interval* shall be prepared on the same basis, but accounting for *load shedding* to the extent that it is expected to occur.

### 3.5.5 Generation Offers and Data

3.5.5.1 Each *Scheduled Generation Company* including *Generation Companies* with bilateral contracts shall submit a standing *generation offer* for each of its *scheduled generating units* for each *trading interval* in each *trading day* of the week in accordance with the *timetable*.

3.5.5.2 Each *generation offer* shall include the information specified in Appendix A1.1.

3.5.5.3 Each *Generating Company* shall, in consultation with

the *System Operator*, submit *check data* to be used by the *Market Operator*, in accordance with clause 3.5.12, to assist in determining the validity of any *generation offer* which may be submitted by the *Scheduled Generator*.

3.5.5.4 Each *Non-Scheduled Generation Company* shall submit a standing schedule of *loading levels* for each of its *non-scheduled generating units* for each *trading interval* in each *trading day* of the week in accordance with the *timetable*.

3.5.5.5 Each *NRE Generation Company* with *intermittent energy resource* shall submit its projected output for each of its *generating units* for each *trading interval* in each *trading day* of the week in accordance with the *timetable*.

### 3.5.6 Customer Demand Bids

3.5.6.1 Each *Customer* may submit a standing *demand bid* in respect of each *trading interval* for each of its *registered scheduled load facilities* for each *trading day* of the week in accordance with the *timetable*.

3.5.6.2 Each *demand bid* submitted under clause 3.5.6.1 shall:

- (a) Correspond to *load* which has been certified as *dispatchable*, in accordance with the *Grid Code* and *Distribution Code*; and
  - (b) Include the information specified in Appendix A1.3.
- 3.5.6.3 Each *Customer* shall, in consultation with the *System Operator*, submit *check data* for each of its *registered scheduled load facilities* to be used by the *Market Operator* in accordance with clause 3.5.12, to assist in determining the validity of any *demand bid* which it may submit.
- 3.5.7 Generation Company Reserve Offers
  - 3.5.7.1 This section shall apply only upon commencement of the *spot market for ancillary services* established under clause 3.3.4.
  - 3.5.7.2 When applicable, subject to clause 3.3.4.2, each *Scheduled Generator* registered as an *Ancillary Services Provider* in respect of a *reserve facility* in a particular *reserve region* shall submit a standing *reserve offer* for each of its relevant *reserve facilities* in respect of that *reserve region* for each *trading interval* for each *day* of the week in accordance with the *timetable*.
  - 3.5.7.3 Each *reserve offer* submitted by a *Generation Company* under clause 3.5.7.2 shall:
    - (a) Correspond to response capability of the relevant *reserve facility* which has been certified as meeting the relevant reserve response standards, for that *reserve facility category*, in accordance with the *Grid Code* and *Distribution Code*; and
    - (b) Include the information specified in Appendix A1.2.
  - 3.5.7.4 Each *Generation Company* registered as an *Ancillary Services Provider* in respect of a *reserve facility* shall, in consultation with the *System Operator*, submit *check data* to be used by the *Market Operator*, in accordance with clause 3.5.12, to assist in determining the validity of any *reserve offer* which it submits.
- 3.5.8 Customer Reserve Offers

- 3.5.8.1 This section shall apply only upon commencement of the *spot market for ancillary services* established under clause 3.3.4. response standards for that *reserve facility category* in accordance with the *Grid Code* and *Distribution Code*; and
- 3.5.8.2 When applicable, subject to clause 3.3.4.2, each *Customer* registered as an *Ancillary Services Provider* in respect of a *reserve facility* in a particular *reserve region* may submit a standing *reserve offer* for each of its *interruptible load facilities* in respect of that *reserve region* for each *trading interval* for each *day* of the week in accordance with the *timetable*. (c) Include the information specified in Appendix A2.
- 3.5.8.3 Each *reserve offer* submitted by a *Customer* under clause 3.5.8.2 shall: 3.5.8.4 Each *Customer* registered as an *Ancillary Services Provider* in respect of a *reserve facility* shall, in consultation with the *System Operator*, submit to the *Market Operator* a *check data* for each of its *reserve facility*, to be used in accordance with clause 3.5.12, to assist in determining the validity of its *reserve offer*.
- 3.5.9 Revision of Standing Offers/Bids
- 3.5.9.1 A standing *generation offer*, a standing *reserve offer*, a standing schedule of *loading levels* or a standing *demand bid* for any *trading interval* in any *day* of the week may be revised by the relevant *Generation Company* or *Customer* in accordance with the *timetable*.
- 3.5.9.2 A *standing generation offer*, a standing *reserve offer*, or a standing *demand bid* which is revised under clause 3.5.9.1:
- (a) Correspond to a *load* for that *Customer* which has been certified as *interruptible* in accordance with the *Grid Code* and *Distribution Code*;
- (b) Correspond to the response capability of the relevant *reserve facility* registered for the provision of *interruptible load* which has been certified as meeting the relevant *reserve*

- (a) Shall take effect the next time a *week ahead projection* is initiated, in accordance with the *timetable*; and
- (b) Shall only affect the offers employed in *market dispatch optimization model* runs used to determine *projections, dispatch, or pricing* for periods not already covered by *week-ahead projections* which have already been *published*, or whose preparation has already been initiated at the time when the revised offer or bid is accepted.

### 3.5.10 Initial setting of Market Offers/Bids

When the *Market Operator* updates a market projection under clause 3.7, the *standing offers* and *standing bids* shall be effective in the absence of revised *market offers* and *market bids* for the corresponding *trading interval* and day of the week.

### 3.5.11 Revision of Market Offers/Bids

3.5.11.1 Each scheduled *Trading Participant* which has submitted *standing offers* or *bids* may revise any of its *market offers* or *market bids* for any *trading interval*

in any *trading day* of the current *week-ahead market horizon* in accordance with the *timetable*, and subject to clause 3.5.11.3 and each revised *market offer* or *market bid* submitted shall provide the information set out in Appendix A2.

3.5.11.2 Each *Generation Company* which has submitted a schedule of *loading levels* for its *non-scheduled generating units* shall revise its schedule of *loading levels* if it reasonably expects that any of its anticipated *loading levels* will differ materially from those previously submitted.

3.5.11.3 In accordance with the *timetable*, a revised *market offer* or *market bid* submitted under clause 3.5.11.1 shall take effect the next time a *dispatch, pricing* or *day-ahead projection* run is initiated.

3.5.11.4 *Market bids* or *market offers* for any *trading interval* shall be revised by *Trading Participants* if, at any time, they no longer represent a reasonable estimate of:

- (a) The expected availability of the relevant *generating unit* or *scheduled load* for that *trading*

*interval*; or

- (b) The *demand bids* or offers likely to apply for the real time *dispatch* optimization of that *trading interval*.

3.5.11.5 The *Market Operator*, in consultation with the *System Operator* and *WESM Members*, and with the approval of the *PEM Board*, shall determine and *publish* criteria to determine the meaning of “reasonable estimate” under clause 3.5.11.4, taking account of:

- (a) The time remaining until the occurrence of the relevant *trading interval* involved,
- (b) The impact on the *market* of any variations to offers or *demand bids*,
- (c) The different categories of *WESM Members*, and
- (d) The different circumstances which may have given rise to the need to make the relevant variation.

3.5.11.6 *Trading Participants* shall immediately advise the *System Operator* and *Market Operator* of any

circumstances which threaten a significant probability of material adverse change in the state of their facilities in any *trading interval* of any *trading day* in the current *week-ahead market horizon*.

3.5.11.7 Prior to the *spot market commencement date*, the *System Operator*, in consultation with *WESM Members*, shall *publish* a non-exhaustive list of events that will be deemed to be or to cause a material adverse change in circumstances for the purposes of clause 3.5.11.6.

3.5.11.8 Each *market offer* or *market bid* for a particular *trading interval* is deemed to stand with effect from the time it is initiated under clause 3.5.10 or revised under clause 3.5.11 and will be used in preparing all market forecasts, *dispatch* targets or prices for that *trading interval*, unless and until a valid revision to the *market offer* is accepted by the *Market Operator*.

3.5.12 Confirmation of Receipt of Valid Offers and Bids

3.5.12.1 To be valid, *generation offers*, *reserve offers* or *demand bids* shall be submitted by the

relevant *Trading Participant*:

- (a) In accordance with clause 3.5.1,
- (b) In accordance with the *timetable*; and
- (c) Consistent with the *check data* submitted by the *Trading Participant* under clauses 3.5.5.3, 3.5.6.3, and 3.5.7.4 as appropriate.

3.5.12.2 The *Market Operator* shall send to each *Trading Participant* from whom it has received a valid *generation offer*, *reserve offer* or valid *demand bid*, an electronic confirmation of receipt and acceptance of that *generation offer*, *reserve offer* or *demand bid* in accordance with the *timetable*.

3.5.12.3 If a *Trading Participant* does not receive confirmation of receipt under clause 3.5.12.2, from the *Market Operator* in accordance with the *timetable*, the *Trading Participant* shall contact the *Market Operator* to determine whether or not the *generation offer*, *reserve offer* or *demand bid* was received.

3.5.12.4 If the offer or bid is invalid, the *Market Operator* shall promptly

inform the *Trading Participant* to resubmit a corrected *generation offer*, *reserve offer* or *demand bid* in accordance with clause 3.5.11.

### 3.5.13 Over-riding Constraints

3.5.13.1 Subject to clause 3.5.13.3, the *System Operator* may recommend to the *Market Operator* that *constraints* be imposed on the *energy dispatch* or *reserve dispatch* of a specific *facility* which may have the effect of fixing or bounding the *generation* or *reserve scheduled* from that *plant*, if the *System Operator* reasonably believes that the *generation offer*, *reserve offer* or *demand bid* does not provide a valid representation of the actual or expected capability of that *facility* in that *trading interval*, and where, in the reasonable opinion of the *System Operator*, such misrepresentation seems likely to impact materially on *dispatch* or *pricing*.

3.5.13.2 In situations where offers are structured in such a way that provision of any level of *reserve services* prohibits the simultaneous provision of very low or high levels of *generation*,

the *System Operator* may also recommend to the *Market Operator* that constraints should be imposed or relaxed so as to allow *generating systems* to operate in a range which allows increased production of either *reserve* or *generation*, as appropriate, having regard to:

- (a) The commercial interests of *Trading Participants*; and
- (b) Market priorities, as reflected by the relevant *market prices* for energy and *reserves* in the relevant *reserve region*.

3.5.13.3 Prior to the *spot market commencement date*, the *System Operator*, in consultation with *Trading Participants* and the *Market Operator*, shall *publish* a general description of the nature of circumstances which will cause it to recommend imposition or relaxation of *constraints* under clauses 3.5.13.1 or 3.5.13.2 and the type of action which may be taken under those circumstances.

3.5.13.4 When acting under clause 3.5.13.1 or 3.5.13.2, the *System Operator* shall:

- (a) Notify the relevant *Trading Participant* of the situation as soon as practicable; and
- (b) Record appropriate details of the incident.

3.5.13.5 At the request of the *Market Operator*, the *System Operator* or any *WESM Member*, the *market surveillance committee* may review any decision by the *Market Operator* to impose or relax *constraints* under clause 3.5.13.1 or 3.5.13.2.

3.5.13.6 If a review conducted under clause 3.5.13.5 concludes that a *Trading Participant* or the *Market Operator* or the *System Operator* has acted inappropriately, and has thereby imposed significant costs on other parties, the *market surveillance committee* may refer that matter to the *Disputes Resolution Administrator* under clause 7.2 or require that *Trading Participant* or the *Market Operator* or the *System Operator* (as the case may be) to pay compensation in accordance with clause 7.2.

## **3.6 MARKET DISPATCH OPTIMIZATION MODEL**

### 3.6.1 Model Definition

3.6.1.1 The *market dispatch optimization model* simultaneously determines *dispatch targets* for the end of a *trading interval*, *reserve allocations* for the *trading interval*, associated *energy prices* at all *trading nodes* in the *power system* and when applicable *reserve prices* for all *reserve regions*.

3.6.1.2 The *Market Operator* shall maintain and *publish* the formulation of the *market dispatch optimization model*, and the performance standards, in accordance with the WESM objectives.

3.6.1.3 The objective of the *market dispatch optimization model* shall be to maximize the value of *dispatched load* based on *dispatch bids*, minus:

(a) The cost of *dispatched generation* based on *dispatched offers*;

(b) The cost of *dispatched reserves* based on *reserves* contracted for or when applicable *reserve offers*; and

(c) The cost of *constraint violation* based on the *constraint violation coefficients*.

3.6.1.4 In formulating the *market dispatch optimization model*, the *Market Operator* and *System Operator* shall ensure that the *dispatch* for each *trading interval* is made subject to:

(a) *Constraints* representing limits on *generation offer*, *demand bid* and when applicable *reserve quantities* as specified by *Trading Participants* in accordance with clause 3.5, except to the extent that as they may be relaxed in accordance with clause 3.5.13;

(b) *Constraints* representing the technical characteristics of *reserve facility categories*, including when applicable *reserve effectiveness factors* initially set at one (1);

(c) *Energy balance equations* for each *node* in the *market network model* ensuring that the net *load* forecast for the end of the



- trading interval* at each *market trading node* as determined by the *Market Operator* is met;
- (d) *Constraints* representing limitations on the *ramp rate* from the plant status deemed to apply prior to the commencement of the *trading interval*;
- (e) *Constraints* defining *power system reserve requirements* as provided by the *System Operator* under clause 3.5.3;
- (f) *Network constraints*, as implied by the *market network model* provided by the *System Operator* under clause 3.5.3;
- (g) Loss and impedance characteristics of *market network lines*, as advised by the *System Operator* under clause 3.5.3, and defined in Appendix A2;
- (h) *Constraints* on HVDC link operations, as advised by the *System Operator* under clause 3.5.3, and defined in Appendix A2;
- (i) Power flow equations, as defined by a DC approximation to an AC power flow within AC sub-systems;
- (j) Any overriding *constraints* imposed on the recommendation of the *System Operator* in accordance with clause 3.5.13; and
- (k) Any *additional constraints* due to *ancillary services* or *system security* requirements.
- 3.6.1.5 The *market dispatch optimization model* shall be designed so that, subject to the approximations and adjustments provided for by clause 3.6.4:
- (a) It will produce an *optimal dispatch* given the objective defined by clause 3.6.1.3, and the *constraint* structure defined by clause 3.6.1.4, and specifying *dispatch* targets for each *scheduled generating unit*, *scheduled load* and *reserve facility*;

(b) It will produce a schedule of flows on each *transmission line* corresponding to the *optimal dispatch* determined in accordance with clause 3.6.1.5 (a);

(c) It will produce *energy prices* for each *market trading node*, and when applicable *reserve price* for each *reserve region*, so that the recommended *dispatch* targets for each individual *Trading Participant* would be optimal for that participant at those prices, given their offers and *demand bids* and after accounting for other *constraints* which may affect that *Trading Participant*; and

(d) It will perform its functions in accordance with the performance standards approved by the *PEM Board*.

### 3.6.2 Constraint Violation Coefficients

#### 3.6.2.1 The *constraint violation coefficients* shall:

(a) Be set so as to ensure that the *market dispatch*

*model* will always find a solution which satisfies all *constraints*, if such a solution exists;

(b) Be set so as to ensure that binding *constraints* are prioritized, such that *constraints* resulting in the lowest reduction in the capability of the *network, load* or *generating units* will occur first; and

(c) Be set so as to ensure that the prices produced by the *market optimization algorithm* will be appropriate in all the circumstances, taking into consideration the processes defined in section 3.10 to adjust or override those prices for *settlement* purposes.

#### 3.6.2.2 The *constraint violation coefficients* may:

(a) Vary according to the time of day, or on any other basis as determined by the *Market Operator*;

(b) Increase progressively as the *constraint* becomes more severe; and

- (c) Increase or decrease as a function of the length of time for which the *constraint* has been violated.

3.6.2.3 The *constraint violation coefficients* for the *nodal energy balance equations* referred to in clause 3.6.1.4 (c):

- (a) Will be known as the *nodal value of lost load (nodal VoLL)*; and
- (b) May vary from *node to node* and/or be set so as to reflect *load shedding* priorities.

### 3.6.3 Interpretation of Model Outputs.

The output of the *market dispatch optimization model* is to be interpreted as providing *energy* and when applicable *reserve dispatch* targets for the end of each *trading interval* to which the *market dispatch optimization model* is applied.

### 3.6.4 Modelling Approximations

3.6.4.1 If the *Market Operator* deems it to be appropriate in all the circumstances, the *market dispatch optimization model* may incorporate reasonable approximations so as to render the optimization problem solvable using an established

optimization methodology such as linear programming.

3.6.4.2 Any approximations introduced in accordance with clause 3.6.4.1:

- (a) May involve producing a piece-wise linear approximation to a non-linear function;
- (b) May involve producing a convex approximation to a non-convex function;
- (c) May include automated procedures to deal with situations in which a choice shall be made to impose or relax certain *constraints*, as provided for in clause 3.5.13; and
- (d) Shall preserve, under all operating conditions, an accuracy which is generally acceptable to all *WESM Members* and particularly to any *Trading Participants* directly affected by such approximations.

### 3.6.5 Model Development

From time to time, the *System Operator* and the *Market*

*Operator* shall investigate the scope for further development of the *market dispatch optimization model* beyond the minimum requirements specified in clause 3.6.1 and, submit their recommendations in a report to the *PEM Board* for public consultation.

### 3.6.6 Market Settlement

The market shall be cleared, prices determined, and dispatch determined according to the model results for each *trading interval*, in the form that is written.

The model results shall not be challenged ex-post.

In the event that *Trading Participants* identify solution inconsistencies with the stated definition and objectives of the model, the *Market Operator* will formulate a plan to correct the model.

Notwithstanding such model solution errors, the *spot market* shall continue to be cleared according to the model results until a model revision is put into service in accordance with clause 3.6.5.

## 3.7 MARKET PROJECTIONS

The *Market Operator* shall prepare and *publish week ahead projections* and *day ahead projections* using the *market dispatch optimization model*, in accordance with the *timetable*.

### 3.7.1 Week Ahead Projections

3.7.1.1 *Week ahead projections* shall be prepared by

the *Market Operator* and *published* daily, in accordance with the *timetable*, to assist *Trading Participants* to anticipate and respond to the range of *spot market* conditions which might reasonably be expected to occur over the forthcoming week.

3.7.1.2 Market projections shall be prepared for all *trading intervals* within the relevant market horizon as defined in the *timetable*.

### 3.7.2 Day Ahead Projections

3.7.2.1 *Day ahead projections* shall be prepared using the *market dispatch optimization model* by the *Market Operator* and *published* regularly through the day, in accordance with the *timetable*, to assist *Trading Participants* to anticipate and respond to the range of *spot market* conditions which might reasonably be expected to occur over the forthcoming day.

3.7.2.2 Market projections shall be prepared for all *trading intervals* within the relevant market horizon as defined in the *timetable*.

### 3.7.3 Preparation of Market Projections

- 3.7.3.1 Each *market projection* shall take into consideration:
- (a) The *network service provider* data prepared in accordance with clause 3.5.2;
  - (b) *Reserve* requirements, the anticipated *market network model configuration*, *constraints* and *system security* requirements for each *reserve region*, as advised by the *System Operator* in accordance with clause 3.5.3;
  - (c) The forecast *demand information* prepared in accordance with clause 3.5.4;
  - (d) The *generation offer* information submitted by each relevant *Trading Participant* in accordance with clause 3.5.5;
  - (e) The loading levels for each non-scheduled and *NRE generating units with intermittent energy resource* in accordance with clause 3.5.5; and
  - (f) When applicable, the *reserve offer information* submitted by each relevant *Trading Participant* in accordance with clause 3.5.7 and 3.5.8.
- 3.7.3.2 Prior to the preparation of each set of *market projections*, the *Market Operator* shall, in consultation with the *System Operator*, prepare an expected *unrestrained net load forecast* in accordance with the procedures developed under clause 3.5.4, and such number of other *load scenarios* as may be determined in consultation with *WESM Participants* and approved by the *PEM Board*.
- 3.7.3.3 The *Market Operator* shall prepare a *market projection* corresponding to each *load scenario* developed under clause 3.7.3.2.
- 3.7.3.4 When a probability of a significant failure in the *power system* has been advised to the *System Operator*, the *Market Operator* may, in consultation with the *System Operator*, also prepare *market projections* in which the *constraint* structure is modified to represent a situation in which such

failures occur.

3.7.3.5 *Market projections* shall be prepared by the *Market Operator* through the application of the *market dispatch optimization model* to all *trading intervals* within the relevant *market horizon* as defined in the *timetable*.

3.7.3.6 When preparing a *market projection*, the starting conditions for each successive *trading interval* shall be determined:

(a) In respect of the first *trading interval*, as the actual, or expected, *power system* conditions at the time of the commencement of the *market projection*; and

(b) In respect of subsequent *trading intervals*, as the projected *power system* conditions determined by the *market dispatch optimization model* for the end of the previous *trading interval* in that *market projection*.

3.7.3.7 The *Market Operator* shall *publish* additional updated versions of a *market projection* in the event of changes which, in the

opinion of the *Market Operator*, are material and which should be communicated to *Trading Participants*.

3.7.3.8 The *Market Operator* shall document the exact procedure it uses for preparation of *market projections* and make the procedure available to all *Trading Participants*.

### 3.7.4 Published Information

3.7.4.1 Based on the information referred to in clause 3.7.3, each *market projection published* by the *Market Operator* in accordance with the *timetable* shall contain the following information for each *trading interval* in the period covered by the *market projection*:

(a) The assumed *net load forecast* at each *market network node*, plus required *reserves* for each *reserve region*;

(b) The required level of *reserve* for each *reserve region*;

(c) Any modifications to *plant* or *network* availability which the *Market Operator* may have made under clause 3.5.13 in forming this projection;

- (d) Projected aggregate *dispatch* of *scheduled generating units* and *scheduled load* at each *market network node*;
  - (e) Projected aggregate cleared *reserve* quantities for *reserve regions* and *reserve facility categories*;
  - (f) The projected *market price* for each *market trading node*;
  - (g) When applicable projected *reserve prices* for each *reserve region*; and
  - (h) Identification and quantification of:
    - (1) Projected *load shedding* requirement;
    - (2) Projected *violations* of *system security*;
    - (3) Projected *failure* to meet *reserve* requirements;
    - (4) *Trading intervals* for which low or inadequate *capacity margins* are projected to
- apply; and
  - (5) Projected *congestion* on *market network lines*; and
  - (6) *Constraint violation coefficients*.

### 3.8 SCHEDULING AND DISPATCH IMPLEMENTATION

#### 3.8.1 Responsibilities of the Market Operator.

Prior to commencement of each *trading interval*, the *Market Operator* shall, in consultation with the *Grid Operator*, and in accordance with the *timetable*:

- (a) Determine, or estimate, the status of all *generation facility* for that *trading interval*;
- (b) Prepare a *forecast* of the *unrestrained net load* expected at each *market trading node* for the end of that *trading interval*;
- (c) Adjust that *unrestrained net load forecast* to account for *load shedding*, if required, in accordance with clause 3.9.5;
- (d) Determine the most appropriate *network configuration* and state to be assumed for the end of that *trading interval*;
- (e) Use the *market dispatch optimization model* to

determine the *target loading level* in MW for each *scheduled generating unit* or *scheduled load* and for each *reserve facility* for the end of that *trading interval* using the latest data from the *System Operator* and *Trading Participants*; and

- (f) Submit to the *System Operator* the *dispatch schedule* containing the *target loading levels* to be achieved at the end of that *trading interval*, determined in accordance with clause 3.8.1 (e).

### 3.8.2 Responsibilities of the System Operator

3.8.2.1 During each *trading interval*, the *System Operator* shall use its reasonable endeavors to:

- (a) Implement the *dispatch targets* determined by the *Market Operator*;
- (b) M a i n t a i n *system security* consistent with the requirements of the *Grid Code*;
- (c) I m p l e m e n t *load shedding*, if necessary, as provided by clause 3.9; and
- (d) Intervene, where necessary, as provided by clauses 6.3 and 6.5.

3.8.2.2 After each *trading interval*, in accordance with the *timetable*, the *System Operator* shall advise the *Market Operator* of:

- (a) Situations in which it became necessary for *dispatch instructions* to deviate from the *dispatch targets* determined by the *Market Operator* during the *trading interval*;
- (b) *Load shedding* or other *directions* issued by the *System Operator* during the *trading interval*;
- (c) S i g n i f i c a n t incidents in which *contingency reserve* was called upon during the *trading interval*;
- (d) *Network constraints* which affected *dispatch* during the *trading interval*;
- (e) Binding *security constraints* which affected *dispatch* during the *trading interval*; and
- (f) O p e r a t i o n a l irregularities arising during the *trading interval* including but not limited to any circumstances



in which there was *prima facie* evidence of a failure to follow *dispatch instructions*.

### 3.8.3 Communication of target loading levels

The *System Operator* shall communicate the *target loading levels* to *Trading Participants* for each *trading interval* prior to the commencement of that *trading interval* in accordance with the *timetable* and consistent with the *Grid Code*.

### 3.8.4 Dispatched Trading Participants

*Trading Participants* who are *dispatched* shall use reasonable endeavors to achieve a *linear ramp rate* over the *trading interval* to reach the *target loading level* by the end of that *trading interval* and within the *dispatch tolerances* specified in clause 3.8.7 and those *Trading Participants* will not be required to operate in any different fashion unless required to:

- (a) Respond in accordance with *reserve* or *ancillary service* contracts; or
- (b) Respond to a direction in accordance with clauses 6.3 and 6.5.

### 3.8.5 Ramp Rate of Trading Participant

Where applicable, *Trading Participants* will be assumed to have a *linear ramp rate* over that *trading interval* to reach the *target loading levels* by the end of that *trading interval*.

### 3.8.6 Deviations from the Ramp Rate

If *Trading Participants* in some part of the *power system* deviate in aggregate from the assumed *linear ramp rate* for any reason or as a result of any cause including the initiation of *load shedding* under clause 3.9.3, these deviations shall be dealt with by the *System Operator*, utilizing the *reserves*, or other *ancillary services* scheduled to deal with such circumstances, in accordance with clause 3.3.

### 3.8.7 Dispatch Tolerances

3.8.7.1 *Dispatch tolerances* shall be set to allow limits on the extent to which *Trading Participants* may deviate from dispatch targets issued by the *System Operator*.

3.8.7.2 The *Market Operator* shall maintain and *publish dispatch tolerances* standards developed by the *System Operator* for each type of *plant*, and location, in accordance with the *Grid Code* and *Distribution Code*.

### 3.8.8 Sanctions of Trading Participants

Any *Trading Participant* who consistently fails to use its reasonable endeavors to act in accordance with *dispatch instructions* issued under clause 3.8.3, or who breaches the *dispatch tolerance* standards published under clause 3.8.7.2, may be liable of a sanction imposed under clause 7.2.

### 3.9 TREATMENT OF LOAD SHEDDING AND EXCESS GENERATION

#### 3.9.1 Direction To Conduct Load Shedding

The *System Operator* may direct a *Trading Participant* to conduct *load shedding* in response to:

- (a) An overall shortage of *energy* at a *node* or in a region specified in the *market network model*; or
- (b) Other *network* conditions, as determined by the *System Operator* in accordance with the procedures established under the *Grid Code and Distribution Code*.

#### 3.9.2 Market Operator Advice On Load Shedding

In the event that:

- (a) *Day ahead projections* performed under clause 3.7; or
- (b) *Dispatch optimization* performed under clause 3.8, indicate that *nodal energy prices* are expected to be equal to, or exceed, *nodal VoLL* at any *customer nodes* in the *market network model*, then the *Market Operator* shall immediately inform the *System Operator* of the likelihood of initiating *load shedding* at those *nodes*.

#### 3.9.3 System Operator Responsibility to Initiate Load Shedding

The *System Operator*:

- (a) Shall, if advised by the *Market Operator* under clause 3.9.2, consider the need to initiate *load shedding*, at those *nodes*, or at other *nodes*, after taking account of the *load shedding targets* from the relevant *dispatch optimization*, and any other considerations which the *System Operator* considers relevant under the *Grid Code and Distribution Code* and any other applicable regulatory instrument; and
- (b) May initiate *load shedding* in response to any other circumstances which it reasonably considers necessitates such action under the *Grid Code and Distribution Code* or any other applicable regulatory instrument.

#### 3.9.4 Advising of Load Shedding

If it is anticipated that *load shedding* will occur in a *trading interval*, the *System Operator* shall, as soon as possible, advise its *load shedding* plans to:

- (a) The *Market Operator*; and
- (b) *Trading Participants* who are likely to be directly affected by such *load shedding*.

#### 3.9.5 Revising Forecasts

If advised by the *System Operator* of the likelihood of *load shedding* in any *trading interval* under clause 3.9.4, the *Market Operator* shall, as soon as possible:

- (a) If practical within the time frame remaining before the start of that *trading interval*, revise the *load forecasts* to be used to determine the *dispatch schedule* for that *trading interval* in accordance with clause 3.5.4.4, to account for those *load shedding* plans; and
- (b) Issue additional *day ahead projections*, if required, under clause 3.7.3.7.

### 3.9.6 Pricing Error Notice

At the commencement of each *trading interval* in which the *load forecast* has been adjusted to account for possible *load shedding*, or as soon as possible thereafter, the *Market Operator* shall issue a *pricing error notice*, in accordance with clause 3.10.5.

### 3.9.7 Management of Load Shedding

The *System Operator* and the *Market Operator* shall manage all aspects of *dispatch* and *pricing* during periods when *load shedding* is required in accordance with the detailed procedures to be developed by the *System Operator* and the *Market Operator*, in consultation with *WESM Participants*, and subject to approval by the *PEM Board*, consistent with the *Grid Code* and *Distribution Code*.

### 3.9.8 Management Procedures for Excess Generation

3.9.8.1 Should either the *dispatch optimization*, or any *market projection*, indicate

*excess generation* at any *node*, the *Market Operator* shall advise the *System Operator* that it may be necessary to require some *generating systems* to shut down.

3.9.8.2 Where necessary to shut down generating systems under clause 3.9.8.1, the *System Operator* and the *Market Operator* shall manage all aspects of *dispatch* and *pricing* in accordance with the procedures to be developed by the *System Operator* and the *Market Operator*, in consultation with *WESM Participants*, and subject to approval by the *PEM Board*.

## 3.10 DETERMINATION OF MARKET PRICES

### 3.10.1 Calculation of Prices

For each *trading interval*, the *Market Operator* shall calculate, and *publish* in accordance with the *timetable*:

- (a) *Ex-ante nodal energy prices* in accordance with clause 3.10.2;
- (b) *Ex-ante zonal energy prices* in accordance with clause 3.10.3;
- (c) *Ex-post nodal energy prices* in accordance with clause 3.10.6;

(d) *Ex-post zonal energy prices* in accordance with clause 3.10.8; and

(e) When applicable, *zonal reserve prices* in accordance with clause 3.10.10.

### 3.10.2 Determination of Ex-Ante Nodal Energy Price

The *ex-ante nodal energy price* for each *market trading node* in any *trading interval* shall, subject to clause 3.10.5, be determined as the *shadow price* on the *energy balance equation* for that *market trading node* formed in accordance with clause 3.6.1.4 (c), in the *dispatch optimization* performed for that *trading interval* in accordance with clause 3.8.1.

### 3.10.3 Determination of Ex-Ante Zonal Energy Prices

*Ex-ante zonal energy prices* shall be determined for each *customer pricing zone*.

### 3.10.4 Publishing Ex-Ante Prices According to Timetable

The *Market Operator* shall *publish* the *ex-ante nodal energy prices* and the *ex-ante zonal energy prices*, prior to the commencement of the *trading interval* to which they apply in accordance with the *timetable*.

### 3.10.5 Pricing Error Notice

In the event where no *ex-ante prices* can be determined or communicated within the timeframe specified by the *timetable*, or the calculated prices

are believed to be in error, as a result of *load shedding* or for any other reason:

(a) The *Market Operator* may issue a *pricing error notice*, in which case the *ex post prices* determined according to clause 3.10.7 shall also serve as *ex-ante prices*.

(b) If no *pricing error notice* is issued within the time specified in the *timetable* after the start of a *trading interval*, the *ex-post prices* shall serve as *ex-ante prices* and shall stand irrespective of the outcome of any subsequent investigations or resolution of any dispute.

### 3.10.6 Determination of Ex-Post Nodal Energy Price

The *ex-post nodal energy price* for each *market trading node* shall be determined as the *shadow price* on the *energy balance equation* for that *market trading node*, formed in accordance with clause 3.6.1.4 (c), in a *expost dispatch optimization* performed, in accordance with the *timetable*, to determine target *dispatch* levels for the end of that *trading interval*, assuming:

(a) The *plant* status for the beginning of that *trading interval* as determined for the *ex-ante dispatch optimization* or, if *load shedding* occurred in the previous *trading interval*, the *plant* status which would have pertained at the end of the previous *trading interval*, as indicated by

the targets determined by the *ex-post dispatch* for the previous *trading interval*;

- (b) The *generation offers* which applied at the beginning of the *trading interval*;
- (c) The *unrestrained load* determined from *metering data*, or estimated, after the occurrence of the *trading interval*, to apply at each *market network node* on average, over the *trading interval*;
- (d) A *market network* configuration and *network* state which the *Market Operator*, in consultation with the *System Operator*, in its reasonable opinion determines to best represent network conditions pertaining for the duration of the *trading interval*, as provided for by the procedures developed under clause 3.10.7; and
- (e) Any relevant constraints recommended by the *System Operator* to represent *system security* conditions or actual *generation* performance over the *trading interval*, as provided for by the procedures developed under clause 3.10.7.

### 3.10.7 Procedures for Ex-Post Nodal Energy Price

The *Market Operator*, in consultation with *WESM* participants, and subject to approval by the *PEM Board*,

shall develop and publish the procedures to be employed in clauses 3.10.6 (d) and (e) in establishing the *network* configuration and other *constraints* to be assumed for the determination of *ex-post nodal energy prices* for circumstances in which *power system* conditions materially change during the *trading interval*, with a view to ensuring that:

- (a) Consistency is maintained between the *market network* configuration and state determined in accordance with clause 3.10.6 (d), any *constraints* determined in accordance with clause 3.10.6 (e) and the *unrestrained net loads* measured or estimated for each *market network node* in accordance with clause 3.10.6 (c); and
- (b) The *ex-post prices* produced in accordance with clause 3.10.6, properly and fairly represent average conditions over the *trading interval*.

### 3.10.8 Determination of Ex-Post Zonal Energy Prices

The *ex-post zonal energy prices* for each *trading interval* shall be load weighted average of the *ex-post nodal energy prices* within a *customer pricing zone*.

### 3.10.9 Determination of Ex-Ante And Ex-Post Energy Settlement Prices.

Subject to clause 3.10.5, the *ex-ante energy settlement prices* and *ex-post energy settlement prices*

for each *market trading node* in each *trading interval* shall be:

- (a) The *ex-ante zonal energy price* and the *ex-post zonal energy price* for that *trading interval* determined for that *customer pricing zone* in accordance with clauses 3.10.3 and 3.10.8, respectively, if that *node* is deemed to be a *customer node* and to lie in a defined *customer pricing zone*; and
- (b) The *ex-ante nodal energy price* and the *ex-post nodal energy price* for that *node*, in that *trading interval*, determined in accordance with clauses 3.10.2 and 3.10.6, respectively, for all other *nodes*.

#### 3.10.10 Determination of Zonal Reserve Price

When applicable, the *zonal reserve price* for each *market reserve zone* in each *trading interval* shall be determined as the *shadow price* on the relevant *reserve requirement constraint*, defined in accordance with clause 3.6.1.4 (e), in the *dispatch optimization* for that *trading interval* and *published* by the *Market Operator* before the start of that *trading interval*.

### 3.11 MARKET INFORMATION

#### 3.11.1 Market Information

3.11.1.1 The *Market Operator* shall *publish* the following:

- (a) *Nodal energy prices*

for each *market trading node*;

- (b) *Zonal energy prices* for each *customer energy pricing zone*;
  - (c) When applicable, *reserve prices* for each *reserve region*; and
  - (d) Binding network constraints,
- for each *trading interval* in accordance with the *timetable*.

3.11.1.2 As part of the information record under clause 5.2.5, the *Market Operator* shall retain details of:

- (a) Final *dispatch offers* and when applicable, *reserve offers*;
- (b) Final *dispatch bids*; and
- (c) Actual availabilities of *generating units* and *scheduled load*;
- (d) Including, for each *trading interval* and *dispatch offer* and *dispatch bid*:
- (e) The identification of the *Trading Participant* submitting the *dispatch bid* or *dispatch offer* as the case may be;

- (f) The *dispatch* bid or *dispatch* offer prices and quantities; and
- (g) The time at which any final *dispatch* offer or *dispatch* bid was made.

3.11.1.3 Each *trading day*, in accordance with the *timetable*, the *Market Operator* shall *publish*:

- (a) The *scheduled generation* or *scheduled load* and *scheduled reserves* for each *scheduled generating unit* and *scheduled load*, respectively, in each *trading interval* for the previous *trading day*; and
- (b) A summary of the information provided to it with respect to each *trading interval* by the *System Operator* in accordance with clause 3.8.2.2.

### 3.11.2 Access to Information

3.11.2.1 All information relating to the operation of the *spot market* that the *Market Operator* is required to *publish* in accordance with the *WESM Rules* shall be made available by the *Market Operator* via the *electronic communications system*.

3.11.2.2 If the *Market Operator* makes information available under clause 3.11.2.1 by additional means other than the *electronic communications system*, the *Market Operator* may, at its discretion, charge a fee for access to that information provided that such fee reflects the *Market Operator's* costs of providing that information.

## 3.12 FINANCIAL TRANSMISSION RIGHTS

### 3.12.1 Market for Transmission Rights

When necessary or reasonably feasible, the *Market Operator* shall establish a market for *transmission rights* as approved by the *PEM Board*.

### 3.12.2 Publication of Rental Information

The *Market Operator* shall regularly *publish* in summary form the rentals associated with each *market network line* as calculated under clause 3.13.12.

### 3.12.3 Further Transmission Rights

From time to time, and at least annually, the *Market Operator* shall assess the potential for the issuance of further *transmission rights*, of the form provided for in the *settlements* process defined by clause 3.13.

### 3.12.4 Matters to Consider in Assessment

The assessment shall take account of the:

- (a) Demand for *transmission rights* between particular locations, as evidenced by *WESM Member* submissions;
  - (b) Uncommitted physical capacity between those locations, as indicated by the difference between the physical capacity of the lines involved, and the *transmission rights* already issued; and
  - (c) Economic feasibility of supporting further *transmission rights*, as indicated by the difference between the *line rental trading amounts* calculated for particular lines in accordance with clause 3.13.12, and the cost of supporting *transmission rights* already issued, as evidenced by the *transmission rights* trading amounts calculated in accordance with clause 3.13.13.
- clause 3.13.2 (d);
  - (b) The issuer of the *transmission right* complies with such *prudential requirements* as may be approved by the *PEM Board* under clause 3.14 taking into account the implied potential exposure of the issuer to *settlement price* differences between the *nodes* involved;
  - (c) The *transmission right* is defined between two *market trading nodes*; and
  - (d) The relevant details of the *transmission rights* are notified to the *Market Operator*, in accordance with clause 3.13.2.

### 3.12.5 Issuing Transmission Rights

3.12.5.1 *Transmission rights* may be issued by the *Market Operator*, and may be settled via the *settlements system*, in accordance with clause 3.13.15, provided:

- (a) The issuer of the *transmission right* enters into a commitment to *support* that *transmission right*, in accordance with

3.12.5.2 A *WESM Member* may request the *Market Operator* to make available a *transmission right* at an appropriate price.

3.12.5.3 The issuance of a *transmission right* is not to be unreasonably withheld.

### 3.12.6 Accounting for Net Income

The net income that will be derived by the *Market Operator*



from the transactions required under clause 3.13.16 or from the sale of *transmission rights*, shall be clearly accounted for, and taken into account when setting the allowable charges under any regulatory instruments applicable to the *Market Operator*.

### 3.13 SETTLEMENT QUANTITIES AND AMOUNTS

#### 3.13.1 Submission of Bilateral Contract Data

3.13.1.1 *Trading Participants* who sell electricity pursuant to *bilateral contracts* and wish those *bilateral contracts* to be accounted for in *settlements* shall, after each *trading day*, in accordance with the *timetable*:

- (a) Submit a schedule to the *Market Operator* specifying the *MWH bilateral sell quantities* at each relevant *market trading node*, in each *trading interval* of that *trading day*;
- (b) Identify the counterparty to the *bilateral contract*; and
- (c) Provide evidence that the counterparty to the *bilateral contract* agrees with the submission made under this clause 3.13.1.1.

3.13.1.2 *Bilateral sell quantities* submitted in accordance with clause 3.13.1.1 (a) are to be deemed to be *bilateral buy quantities* for the party identified in clause 3.13.1.1 (b), at the same *market trading node*.

#### 3.13.2 Submission of Transmission Right Data

3.13.2.1 This section shall apply only upon commencement of the *transmission rights* market established under clause 3.12.1.

3.13.2.2 *Trading Participants* who hold *transmission rights* and wish to have those *transmission rights* accounted for in *settlements* shall, after each *trading day*, in accordance with the *timetable*, submit to the *Market Operator* a schedule specifying:

- (a) The *sending node* and *receiving node* between which each *transmission right* applies;
- (b) The *MWH quantities* of each *transmission right* in each *trading interval* of that *trading day*, as they apply at the *sending node*;
- (c) The agreed loss differential

associated with each *transmission right*, if any, as a proportion of the quantity specified in clause 3.13.2 (b); and

- (d) That the *System Operator* is in agreement with the submission made under clause 3.13.2 (and providing evidence of that agreement), and will cover any deficit in that *System Operator's settlement* position with the *spot market* under clause 3.13.15.1 (b) arising as a result of honoring this *transmission right*.

### 3.13.2.3 Data for Bilateral Contracts and Transmission Rights

The *Market Operator* shall:

- (a) Inform the *Trading Participants* which submitted data under clause 3.13, if any of the data provided is invalid or incomplete; and
- (b) If the data provided under clause 3.13 is valid or complete, employ that data for *settlements* purposes in accordance with

clauses 3.13.7 and 3.13.13.

### 3.13.4 Zonal Reserve Settlement Quantity

The *zonal reserve settlement quantity* for each *Trading Participant* in each *trading interval* shall be calculated as:

- (a) The aggregate, across all of the *Trading Participant's* facilities in the relevant *reserve region*, of the *reserve target* determined by the *dispatch optimization* performed prior to the beginning of that *trading interval*, in accordance with clause 3.8.1; multiplied by
- (b) The *reserve effectiveness factor* for that *reserve facility category* to be determined by the *System Operator*.

### 3.13.5 Defining the Gross Ex-Ante Energy Settlement Quantity for Market Trading Nodes

3.13.5.1 For each *trading interval*, the *gross ex-ante energy settlement quantity* for each *market trading node* shall be determined by the *Market Operator* as follows:

- (a) If the *market trading node* is defined under clause 3.2.2.1 as lying on the boundary of the *power system* operated by the *System Operator*,

the gross *ex-ante energy settlement quantity* for that *market trading node* is the average of the net expected flows into the *power system* operated by the *System Operator* through the associated *meter*, as estimated by the initial conditions assumed for the beginning of the *trading interval*, and by the forecast, or target, for the end of that *trading interval* for that *market trading node* assumed in, or estimated by, *the dispatch optimization* performed prior to the beginning of that *trading interval*, both adjusted for *bilateral contracts* in accordance with clause 3.13.7;

- (b) If the *market trading node* is defined under clause 3.2.2.2 as a *generator node* lying on the interface between *networks, apparatus or equipment* operated by parties other than the *System Operator*, the gross *ex-ante energy settlement*

*quantity* for the *market trading node* is the average of the net expected flows through the associated *meter* from the *Generating Company* to the *Customer* side of the *meter*, as estimated by the initial conditions assumed for the beginning of that *trading interval*, and by the target *generation* for the end of that *trading interval* for that *generator node*, both adjusted for *bilateral contracts* in accordance with clause 3.13.7; and

- (c) If the *market trading node* is defined under clause 3.2.2.2 as a *customer node* lying on the interface between *networks, apparatus or equipment* operated by parties other than the *System Operator*, the gross *ex-ante energy settlement quantity* for that *market trading node* is the negative of the amount determined for the corresponding *generator node* in clause 3.13.5.1(b).

### 3.13.6 Defining the Gross Ex-Post Energy Settlement Quantity for Market Trading Nodes

For each *trading interval*, the *gross ex-post energy settlement quantity* for each *market trading node* shall be determined by the *Market Operator* as follows:

- (a) If the *market trading node* is defined under clause 3.2.2.1 as lying on the boundary of the *power system* operated by the *System Operator*, the *gross ex-post energy settlement quantity* for the *market trading node* is the net *metered* flow into the *power system* operated by the *System Operator* through the associated meter, adjusted for *bilateral contracts* in accordance with clause 3.13.7;
- (b) If the *market trading node* is defined under clause 3.2.2.2 as a *generator node* lying on the interface between *networks*, apparatus or equipment operated by parties other than the *System Operator* the *gross ex-post energy settlement quantity* for the *market trading node* is the net metered flows through the associated *meter* from the *Generation Company* to the *Customer* side of the *meter* adjusted for *bilateral contracts* in accordance with clause 3.13.7; and
- (c) If the *market trading node* is defined under clause 3.2.2.2 as a *customer node* lying on the interface between

*networks*, apparatus or equipment operated by parties other than the *System Operator* the *gross ex-post energy settlement quantity* for the *market trading node* is the negative of the amount determined for the corresponding *generator node* in clause 3.13.6.1(b).

### 3.13.7 Energy Settlement Quantity Adjustments for Bilaterals

For *settlement* purposes, the *ex-ante energy settlement quantity* and the *ex-post energy settlement quantity* for any *market trading node* in any *trading interval* shall be determined by the *Market Operator* by adjusting the *gross-ex-ante energy settlement quantity* or *gross ex-post energy settlement quantity*, as appropriate, for that *market trading node* and any *trading interval*, as measured in accordance with clause 3.13.5 or estimated in accordance with clause 3.13.6, for *bilateral contract* quantities notified to the *Market Operator* under clause 3.13.1.1, or inferred by the *Market Operator* under clause 3.13.1.1 and accepted as valid under clause 3.13.1.2 by:

- (a) Subtracting all *bilateral sell quantities* notified for that *node* in that *trading interval* from the measured or estimated *gross energy settlement quantity* for that *node* in that *trading interval*; and
- (b) Adding all *bilateral buy quantities* inferred for that *node* in that *trading*

*interval* to the measured or estimated *gross energy settlement quantity* for that *node* in that *trading interval*.

### 3.13.8 Determining the Ex Ante Energy Trading Amount

For *settlement* purposes, the *ex-ante energy trading amount* for each *market trading node* and *trading interval* will be determined as the *ex-ante energy settlement price* for that *node* in that *trading interval* multiplied by the *ex-ante energy settlement quantity* (in MWh) for that *node* in that *trading interval*.

### 3.13.9 Determining the Ex Post Energy Trading Amount

For *settlement* purposes, the *ex post energy trading amount* for each *market trading node* and *trading interval* will be determined as:

- (a) The *ex-post energy settlement price* for that *node* in that *trading interval* multiplied by the *ex-post energy settlement quantity* for that *node* in that *trading interval* (in MWh); minus
- (b) The *ex-post energy settlement price* for that *node* in that *trading interval* multiplied by the *ex-ante energy settlement quantity* for that *node* in that *trading interval* (in MWh).

### 3.13.10 Determining the Reserve Trading Amount

3.13.10.1 For settlement purposes, the reserve

trading amount for each *Trading Participant* who supplies *reserve* to a particular *reserve region* in a *trading interval* will be determined as the *zonal reserve price* for that *reserve region* in that *trading interval* multiplied by the zonal reserve settlement quantity for that *Trading Participant* in that *reserve region* for that *trading interval*.

3.13.10.2 During the initial operation of the *interim WESM*, the *reserve trading amount* shall be calculated based on the cost of *reserves* contracted for by the *System Operator*.

### 3.13.11 Determining the Reserve Cost Recovery Charge

The *reserve cost recovery charge* for *settlement* purposes will be determined for each *Trading Participant* in each *trading interval* in accordance with the procedures developed under clause 3.3.5.

### 3.13.12 Calculation of Line Rental Trading Amounts

The *Market Operator* shall calculate the line rental trading amounts for each *transmission line* in the *market network model* as:

- (a) The expected flow of *energy* out of the *receiving node* of the *market network line* as determined by the *market*

*dispatch optimization model* by the *ex-ante nodal energy settlement price* at that *node*; less

- (b) The expected flow of *energy* into the sending *node* multiplied by the *ex-ante nodal energy settlement price* at that *node* of the *market network line* as determined by the *market dispatch optimization model*.

### 3.13.13 Determining the Transmission Rights Trading Amount

For *settlement purposes*, the *transmission right trading amount* for each *transmission right* in each *trading interval* is to be determined as:

- (a) The MWh capacity of that *transmission right* in that *trading interval* as notified under clause 3.13.2, multiplied by the *ex ante energy settlement price* for the *receiving node* in that *trading interval*; minus the sum of
- (b) The MWh capacity of that *transmission right*, in that *trading interval*, as notified under clause 3.13.2, multiplied by the *ex ante energy settlement price* at the sending *node* in that *trading interval*; plus
- (c) The MWh capacity of that *transmission right* in that *trading interval*, as notified under clause 3.13.2, multiplied by the agreed loss differential for

that *transmission right*, as notified under clause 3.13.2, multiplied by the *ex ante energy settlement price* at the *receiving node* in that *trading interval*.

### 3.13.14 Settlement Amounts for Trading Participants

3.13.14.1 For each *billing period*, the *Market Operator* shall determine the *settlement amount* for each *Trading Participant* as the sum of the aggregate trading amounts for the *trading intervals* in that *billing period*, determined in accordance with clause 3.13.14.2:

- (a) Any amount payable by the *Market Operator* to that *Trading Participant* in respect of that *billing period* and not accounted for in clause 3.13.14.2, including payment for any *ancillary services* purchased on behalf of the *System Operator*; less the sum of
- (b) Any *market fees* which that *Trading Participant* is required to pay in respect of that *billing period* as determined in accordance with clause 2.10; plus

- (c) Any other amounts payable by that *Trading Participant* to the *Market Operator* in respect of that *billing period*, including any *ancillary services cost recovery charges*.
- 3.13.14.2 The aggregate trading amount for a *Trading Participant* for a *trading interval* equals the sum of:
- (a) The *ex-ante energy trading amounts* for each *market trading node* for which that *Trading Participant* is responsible calculated in accordance with clause 3.13.8 (which will typically be positive for a *Generation Company* and negative for a *Customer*); plus
  - (b) The *ex-post energy trading amounts* for each *market trading node* for which that *Trading Participant* is responsible calculated in accordance with clause 3.13.9 (which may be positive or negative for any *Trading Participant*); plus
  - (c) The *reserve trading amounts* for each *reserve region* into which that *Trading Participant* contributes *reserve* calculated in accordance with clause 3.13.10 (which will always be positive for both *Generation Companies* and *Customers*); plus
  - (d) The *transmission right trading amounts* for each *transmission right* held by the *WESM Participant* calculated in accordance with clause 3.13.13 (which will typically be positive for any *Trading Participant*); less the sum of
  - (e) The *reserve cost recovery charge* determined for that *Trading Participant* with respect to any *reserve cost recovery zone* within which it has any *facility connected* calculated in accordance with the procedures developed under clause 3.3.5 (which will be positive for any *Trading Participant*); and
  - (f) Any other *ancillary service cost*

*recovery charges* determined for that *Trading Participant* in accordance with the procedures developed under clause 3.3.5 (which will be positive for any *Trading Participant*).

3.13.15 Settlement Amounts for the Network Service Provider

3.13.15.1 For each *billing period*, the *Market Operator* shall determine the *settlement amount* for the *Network Service Provider* as the sum over all *trading intervals* in that *billing period* of:

- a) The *line rental trading amounts* calculated for each *transmission line* owned by the *TRANSCO* in accordance with clause 3.13.12 (which will typically be positive); minus the sum of
- b) The *transmission right trading amounts* for each *transmission right* for which the *System Operator* has agreed to support in accordance with clause 3.13.2 calculated in accordance with clause 3.13.13 (which will typically be positive).

3.13.16 Treatment of Remaining Settlement Surplus

3.13.16.1 If the transactions required by clauses 3.13.14 and 3.13.15, in aggregate, result in a surplus or deficit remaining, this will be known as the *net settlement surplus*.

3.13.16.2 The *net settlement surplus*:

- (a) May be retained by the *Market Operator*, or paid to the *System Operator*, according to a formula to be developed by the *Market Operator* subject to approval of the *PEM Board*; and
- (b) Shall be clearly accounted for and taken into account when setting the allowable charges under any regulatory instruments applying to the *Market Operator* and the *System Operator*.

3.13.16.3 The *Market Operator* shall:

- (a) *Publish* regular summary reports on the amount of any *net settlement surplus* being generated;



(b) Within one year from *spot market commencement date*, and every year thereafter, *publish* a review of the underlying factors giving rise to any *net settlement surplus*, and attempt to identify any binding constraints which may have caused or contributed to such *net settlement surplus*; and

(c) Determine, in consultation with *Trading Participants* and *Network Service Providers*, and subject to approval by the *PEM Board*, whether the *net settlement surplus* generated by any particular set of constraints is of such magnitude as to justify development of a regime similar to that implemented in the *WESM Rules* with respect to *transmission line rentals* and *transmission rights*.

payable by *WESM Members* and facilitate the billing and *settlement* of transactions between itself and the *WESM Members* under the *WESM Rules* in accordance with this clause 3.14.

### 3.14.2 Electronic Funds Transfer

3.14.2.1 The *Market Operator* shall ensure that an *EFT facility* is provided and made available for all *WESM Members* for the purposes of facilitating *settlements* and the collection and payment of all *market fees*.

3.14.2.2 Unless otherwise authorized by the *Market Operator*, all *WESM Members* shall use the *EFT facility* provided by the *Market Operator* under clause 3.14.2.1 for the *settlement* of *transactions* and the payment of *market fees*.

### 3.14.3 Payment of Settlement Amount

3.14.3.1 Where the *settlement amount* for a *WESM Member* is a negative amount, the *WESM Member* shall pay that amount to *Market Operator* in accordance with clause 3.14.6.

3.14.3.2 Where the *settlement amount* for a *WESM Member* is a positive amount, *Market Operator* shall pay that amount to the *WESM Member* in accordance with clause 3.14.7.

## 3.14 SETTLEMENT PROCESS

### 3.14.1 Settlements Management by Market Operator

The *Market Operator* shall determine the *settlement amount*

### 3.14.4 Preliminary Statements

3.14.4.1 Within 7 *business days* after the end of each *billing period*, the *Market Operator* shall give each *WESM Member* who has engaged in *market transactions* in that *billing period* a preliminary statement which sets out the *market transactions* of that *WESM Member* in that *billing period* and the *settlement amount* payable by or to that *WESM Member*.

3.14.4.2 The statements issued under this clause 3.14.4 shall include supporting data for all amounts payable sufficient to enable each *WESM Member* to audit the calculation of the amount payable by or to that *WESM Member*.

3.14.4.3 If the *WESM Member* reasonably believes there was an error or discrepancy in the preliminary statement given to the *WESM Member* by the *Market Operator* under this clause 3.14.4, the *WESM Member* shall notify the *Market Operator* as soon as practicable of that error or discrepancy and the *Market Operator* shall review the preliminary statement.

3.14.4.4 If the *Market Operator* considers that a preliminary statement contains an error or discrepancy after reviewing the preliminary statement under clause 3.14.4.3, the *Market Operator* shall notify all *WESM Members* whose *final statements* will be affected by the error or discrepancy within 7 days of the date on which the error or discrepancy first came to the attention of the *Market Operator* and the *Market Operator* shall ensure that the error or discrepancy is corrected in the relevant *final statements*.

### 3.14.5 Final Statements

3.14.5.1 No later than eighteen *business days* after the end of each *billing period*, the *Market Operator* shall give to each *WESM Member* who has engaged in *market transactions* in that *billing period* a *final statement* stating the amounts payable by the *WESM Member* to the *Market Operator* or payable by the *Market Operator* to the *WESM Member* in respect of the relevant *billing period*.

3.14.5.2 The statements issued under this clause 3.14.5 shall include supporting

data for all amounts payable which shall be sufficient to enable each *WESM Member* to audit the calculation of the amount payable by or to that *WESM Member*.

any preliminary statement provided under clause 3.14.4 to be payable by or to it; or

### 3.14.6 Payment by Trading Participants

No later than 3.00 pm on the thirtieth *business day* after the end of a *billing period* or 3.00 pm on the twelfth *business day* after receiving a *final statement* under clause 3.14.5, whichever is the later, each *WESM Member* shall pay to the *Market Operator* in cleared funds the *settlement amount* (if any) stated to be payable to the *Market Operator* by that *WESM Member* in that *WESM Member's final statement*, whether or not the *WESM Member* disputes, or continues to dispute, the amount payable.

(b) The supporting data, they shall each use reasonable endeavors to resolve the dispute within fifteen *business days* after the end of the relevant *billing period*.

### 3.14.7 Payment to Trading Participants

By no later than 3.00 pm on the day on which the *Market Operator* is to be paid under clause 3.14.6, the *Market Operator* shall pay to each *WESM Member* in cleared funds the *settlement amount* (if any) stated to be payable to that *WESM Member* in that *WESM Member's final statement*.

3.14.8.2 Disputes in respect of *final statements* or the supporting data provided with them in accordance with clause 3.14.5 shall be raised within twelve months of the relevant *billing period*.

3.14.8.3 Disputes raised under this clause 3.14.8 shall be resolved by agreement or pursuant to the dispute resolution procedures set out in clause 7.3.

### 3.14.8 Disputes

3.14.8.1 If a dispute arises between a *WESM Member* and the *Market Operator* concerning either:

### 3.14.9 Settlement Revisions

3.14.9.1 If an amount in a *final statement* issued under clause 3.14.5:

(a) The *settlement amount* stated in

(a) Has been the subject of a dispute and the dispute has been resolved in any way which causes the amount payable to differ from the amount

- payable as set out in the *final statement*;  
or
- (b) Has been identified as being in error in accordance with clause 3.14.9.2 and the correct amount has been determined by the *Market Operator*,
  - (c) The *Market Operator* shall issue to each *WESM Member* affected by the resolution of the dispute or the correction of the error a revised statement for the relevant *billing period* setting out:
    - (d) The amount payable by the *WESM Member* to the *Market Operator* or the amount payable by the *Market Operator* to the *WESM Member*; and
    - (e) The adjustment to the final statement as agreed or determined plus interest calculated on a daily basis at the *interest rate* for the period from the *payment date* applicable to the *final statement* to which the adjustment relates to the *payment date* applicable to the revised statement issued under this clause 3.14.9.1.
- 3.14.9.2 If the *Market Operator* becomes aware of an error in an amount stated in a *final statement* issued under clause 3.14.5 and, in the *Market Operator's* reasonable opinion, a *WESM Member* would be materially affected if a revision to the *final statement* was not made to correct the error, then the *Market Operator* shall issue revised statements for the relevant *billing period* in accordance with clause 3.14.9.1.
- 3.14.10 Payment of Adjustments
- 3.14.10.1 The *Market Operator* shall specify the time and date on which a payment of an adjustment under a revised statement issued under clause 3.14.9 is due, which date shall be not less than ten *business days* and not more than fifteen *business days* after the issue of that revised statement.
  - 3.14.10.2 By no later than the time and date specified by the *Market Operator* pursuant to clause 3.14.10.1, each *WESM*

*Member* shall pay to the *Market Operator* in cleared funds the net amount (if any) stated to be payable by that *WESM Member* in the revised statement issued to it under clause 3.14.9.

3.14.10.3 On the day on which the *Market Operator* is to be paid under clause 3.14.10.2, the *Market Operator* shall pay to each *WESM Member* in cleared funds the net amount (if any) stated to be payable to that *WESM Member* in the revised statement issued to it under clause 3.14.9.

### 3.14.11 Payment Default Procedure

3.14.11.1 Each of the following events is a *default event* in relation to a *WESM Member*:

- (a) The *WESM Member* does not pay any money due for payment by it under the *WESM Rules* by the appointed time on the due date;
- (b) The *Market Operator* does not receive payment in full of any amount claimed by the *Market Operator* under any *credit support* in respect of a *WESM Member*, within

ninety minutes after the due time for payment of that claim;

- (c) The *WESM Member* fails to provide *credit support* required to be supplied under the *WESM Rules* by the appointed time on the due date;
- (d) It is or becomes unlawful for the *WESM Member* to comply with any of its obligations under the *WESM Rules* or any other obligation owed to the *Market Operator* or it is claimed to be so by the *WESM Member*;
- (e) It is or becomes unlawful for any *Credit Support Provider* in relation to the *WESM Member* to comply with any of its obligations under the *WESM Rules* or any other obligation owed to the *Market Operator* or it is claimed to be so by that *Credit Support Provider*;
- (f) An authorization from a *government authority* necessary to enable the *WESM Member* or a *Credit Support*

*Provider* which has provided *credit support* for that *WESM Member* to carry on their respective principal businesses or activities ceases to have full force and effect;

(g) The *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member* ceases or is likely to cease to carry on its business or a substantial part of its business;

(h) The *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member* enters into or takes any action to enter into an arrangement (including a scheme of arrangement), composition or compromise with, or assignment for the benefit of, all or any class of their respective creditors or members, or a moratorium involving any of them;

(i) The *WESM Member* or a *Credit Support Provider* which has

provided *credit support* for that *WESM Member* states that it is unable to pay from its own money its debts as and when they fall due for payment;

(j) A receiver or receiver and manager is appointed in respect of any property of the *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member*;

(k) An administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function is appointed in respect of the *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member*, or any action is taken to appoint any such person;

(l) An application or order is made for the winding up or dissolution or a resolution is passed or any steps

are taken to pass a resolution for the winding up or dissolution of the *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member*;

(m) The *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member* dies or is dissolved unless such notice of dissolution is discharged; and

(n) The *WESM Member* or a *Credit Support Provider* which has provided *credit support* for that *WESM Member* is taken to be insolvent or unable to pay its debts under any applicable legislation.

3.14.11.2 Where a *default event* has occurred in relation to a *WESM Member*, the *Market Operator* may:

(a) Issue a *default notice* which specifies:

(1) The nature of the alleged default; and

(2) If the *Market Operator* considers that the default is capable of remedy, that the *WESM Member* shall remedy the default within 24 hours of the issue of the *default notice*; and/or

(b) Immediately issue a *suspension notice* in accordance with clause 3.15.7 if the *Market Operator* considers that the default is not capable of remedy and that failure to issue a *suspension notice* would be likely to expose other *WESM Members* to greater risk; and/or

(c) If it has not already done so, make a claim upon any *credit support* held in respect of the *WESM Member* for such amount as the *Market Operator* determines represents the amount of any money actually or contingently owing by the *WESM Member* to the *Market Operator* pursuant to the *WESM Rules*.

### 3.14.11.3 If:

- (a) The *Market Operator* considers that a *default event* is not capable of remedy; or
- (b) A *default event* is not remedied within 24 hours of the issue of the *default notice* or any later deadline agreed to in writing by the *Market Operator*; or
- (c) The *Market Operator* receives notice from the defaulting *WESM Member* that it is not likely to remedy the default specified in the *default notice*.

Then the *Market Operator* may issue a *suspension notice* in accordance with clause 3.15.7 under which the *Market Operator* notifies the defaulting *WESM Member* that it is prohibited from participating in the *spot market*.

### 3.14.12 Interest on Overdue Amounts

If a *Trading Participant* fails to pay any amount due and payable by it under the *WESM Rules*, such overdue amount shall bear the *default interest rate* reckoned from the first day such amount is due and payable, up to and

including the date on which payment is made, with interest computed based on a 360-day year.

## 3.15 PRUDENTIAL REQUIREMENTS

### 3.15.1 Purpose

The purpose of the *prudential requirements* is to ensure the effective operation of the *spot market* by providing a level of comfort that *WESM Members* will meet their obligations to make payments as required under the *WESM Rules*.

### 3.15.2 Provision of Security

3.15.2.1 Subject to clause 3.15.2.2, a *Trading Participant* wishing to participate in *market transactions* shall provide and maintain a security complying with the requirements of this clause 3.15.2.

3.15.2.2 The *Market Operator* may exempt *WESM Members* from the requirement to provide a security under clause 3.15.2.1, if:

- (a) the *Market Operator* believes it is likely that the amount payable by the *Market Operator* to that *WESM Member* under the *WESM Rules* will consistently exceed the amount payable to the *Market*



*Operator* by that *WESM Member* under the *WESM Rules* in respect of that period; or

(b) the *Market Operator* believes it is unlikely that the *WESM Member* will be required to pay any amounts to the *Market Operator*; or

(c) the *Trading Participant* is a *Distribution Utility* that demonstrates the financial capability by complying with agreed upon financial covenants and that such exemption is subject to the approval of the *PEM Board*.

3.15.2.3 If, under clause 3.15.2.2, the *Market Operator* has exempted a *WESM Member* from the requirement to provide a security under clause 3.15.2.1, then the *Market Operator* may vary or cancel the exemption at any time by giving written notice of the variation or cancellation of the exemption to the *WESM Member*.

### 3.15.3 Form of Security

The security provided by a *WESM Member* under this clause 3.15 shall be either:

(a) A bank guarantee in a form and from a bank acceptable to the *Market Operator*; or

(b) Another immediate, irrevocable and unconditional commitment in a form and from a bank or other institution acceptable to the *Market Operator*; or

(c) Surety Bond issued by a surety or insurance company duly accredited by the Office of the Insurance Commissioner of the Philippines.

### 3.15.4 Amount of Security

3.15.4.1 Subject to clause 3.15.2.2, prior to the end of each *financial year* the *Market Operator* shall determine and provide written confirmation to each *WESM Member* of its maximum exposure to the *Market Operator* in respect of a *billing period* in the following *financial year*.

3.15.4.2 The *Market Operator* may review its determination of a *WESM Member's* maximum *exposure* at any time, provided that any change to a *WESM Member's* maximum exposure will apply no earlier than thirty days following notification

by the *Market Operator* to that *WESM Member* of that change or such earlier period agreed by the *PEM Board*.

3.15.4.3 Each *WESM Member* shall ensure that at all times the aggregate undrawn and unclaimed amounts of current and valid security held by the *Market Operator* in respect of that *WESM Member* is not less than that *WESM Member's* maximum exposure.

3.15.4.4 To diminish the possibility of incurring a *margin call* under clause 3.15.10, a *WESM Member* may in its absolute discretion provide to the *Market Operator* a security or securities in accordance with clause 3.15.3 for an aggregate amount which exceeds its maximum exposure.

### 3.15.5 Replacement Security

3.15.5.1 If:

- (a) An existing security provided by a *WESM Member* under this clause 3.15 is due to expire or terminate; and
- (b) After that security expires or terminates, the maximum amount which the *Market Operator* will be

entitled to be paid in aggregate under any remaining security or securities provided by the *WESM Member* under this clause 3.15 will be less than *WESM Member's* maximum exposure,

(c) Then the *WESM Member* shall deliver to the *Market Operator*, at least ten *business days* prior to the time at which that existing security is due to expire or terminate, a replacement security which:

- (1) Is of sufficient value to enable the *WESM Member* to comply with clause 3.15.4.3;
- (2) Complies with the requirements of this clause 3.15; and
- (3) Will take effect no later than the date on which the existing security is due to expire or terminate.

3.15.5.2 If:

- (a) A *WESM Member* fails to comply with clause 3.15.5.1; and
- (b) That *WESM Member* does not remedy that failure within 24 hours after being notified by the *Market Operator* of the failure, then the *Market Operator* shall give the *WESM Member* a *suspension notice* in accordance with clause 3.15.7.

then, within 24 hours of receiving a notice under clause 3.15.6.1, the *WESM Member* shall provide an additional security to ensure that at all times, it complies with the requirements of this clause 3.15.

- 3.15.6.3 If a *WESM Member* fails to comply with clause 3.15.6.2 within the time period referred to in that clause, then the *Market Operator* shall give the *WESM Member* a *suspension notice* in accordance with clause 3.15.7.

### 3.15.6 Drawdown of Security

- 3.15.6.1 If the *Market Operator* exercises its rights in accordance with this clause 3.15 under a security provided by a *WESM Member* under this clause 3.15, then the *Market Operator* shall notify the *WESM Member*.

- 3.15.6.2 If, as a result of the *Market Operator* exercising its rights under a security provided by a *WESM Member* under this clause 3.15, the maximum amount which the *Market Operator* is entitled to be paid under the security or securities provided by the *WESM Member* under this clause 3.15 is less than the *WESM Member's* maximum exposure,

### 3.15.7 Suspension of a WESM Member

- 3.15.7.1 As soon as practicable after a *suspension notice* is issued by the *Market Operator* under the *WESM Rules*, the *Market Operator* shall:

- (a) *Publish* the suspension notice; and
- (b) Place a notice in a newspaper of general circulation that the *WESM Member* has been suspended.

- 3.15.7.2 The *Market Operator* shall revoke a *suspension notice* if:

- (a) In the case of a *default event*, the *default event* is remedied; or

(b) In the case of a failure to maintain compliance with *prudential requirements* under this clause 3.15, that failure has been remedied; and

(c) There are no other circumstances in existence which would entitle the *Market Operator* to issue a *suspension notice*, except that the *Market Operator* shall not revoke a *suspension notice* more than one month after it was issued.

3.15.7.3 If a *suspension notice* is revoked, the *Market Operator* shall *publicize* that fact in the same manner in which the *suspension notice* was *publicized* in accordance with clause 3.15.7.1.

3.15.7.4 From the time that the *Market Operator* issues a *suspension notice* to a *WESM Member* under the *WESM Rules*, the *WESM Member* is ineligible to participate in the *spot market*, until such time as the *Market Operator* notifies the *WESM Member* and all other relevant *Trading Participants* that the *suspension notice* has been revoked.

3.15.7.5 A *WESM Member* shall comply with a *suspension notice* issued to it under the *WESM Rules*.

3.15.7.6 If:

(a) The *Market Operator* has issued a *suspension notice* to a *WESM Member* due to a *default event* and in the *Market Operator's* reasonable opinion the *WESM Member* is incapable of rectifying the *default event* for any reason; or

(b) The *Market Operator* has issued a *suspension notice* to a *WESM Member* due to a failure by the *WESM Member* to continue to satisfy the *prudential requirements* and in the *Market Operator's* reasonable opinion the *WESM Member* is incapable of rectifying that failure for any reason, the *Market Operator* shall deregister that *WESM Member* as soon as practicable and promptly *publish* a notice of that fact.

### 3.15.8 Trading Limits

3.15.8.1 Subject to clause 3.15.8.2, the *Market Operator* shall set a *trading limit* for each *WESM Member* who participates in *market transactions*.

3.15.8.2 If, under clause 3.15.2.2, the *Market Operator* has exempted a *Trading Participant* from the requirement to provide a security under clause 3.15.2.1 for a period, then the *Market Operator* shall not set a *trading limit* for that *WESM Member* for the period during which that exemption applies.

3.15.8.3 The *trading limit* for a *WESM Member* at any time shall not be greater than 85% of the total value of the security provided by the *WESM Member* to the *Market Operator* under clauses 3.15.3 (a), (b) and (c).

### 3.15.9 Monitoring

3.15.9.1 Each day, the *Market Operator* shall review its actual exposure to each *WESM Member* in respect of previous *billing periods* under the *WESM Rules*.

3.15.9.2 In calculating the *Market Operator's* actual exposure to a *WESM Member* under clause 3.15.9.1, the period between the start of the *billing*

*period* in which the review occurs and the start of the *trading day* immediately following the day on which the review occurs is to be treated as a previous *billing period*.

3.15.9.3 In calculating the *Market Operator's* actual exposure to a *WESM Member* under clause 3.15.9.1, the *Market Operator* shall take into account:

(a) *Outstanding settlement amounts* for the *WESM Member* in respect of previous *billing periods*; and

(b) *Settlement amounts* for the *WESM Member* for *trading intervals* from the start of the *billing period* in which the review occurs to the end of the *trading day* on which the review occurs based on:

(1) *Actual market prices* or, if *actual market prices* are not available for all or part of a *trading day*, the *market prices* forecast for the relevant *trading day* as specified in the relevant

*day ahead projection; and*

- (2) *Actual metered quantities for the WESM Member or, if actual metered quantities are not available for a trading interval, then a trading imbalance for that trading interval determined by the Market Operator as the average of the trading imbalances of that WESM Member for the corresponding trading interval on the corresponding trading days of the four previous weeks.*

3.15.9.4 *If the Market Operator calculates that its actual exposure to a WESM Member exceeds the WESM Member's trading limit, then the Market Operator shall notify the WESM Member accordingly.*

### 3.15.10 Margin Calls

3.15.10.1 *If the Market Operator calculates that its exposure to a WESM Member exceeds the*

*WESM Member's trading limit, then the Market Operator shall make a margin call on that WESM Member by notice to the WESM Member.*

3.15.10.2 *If the Market Operator makes a margin call on a WESM Member under clause 3.15.10.1, then the WESM Member must satisfy the margin call within the period determined in accordance with clause 3.15.10.3 by either:*

(a) *Providing to the Market Operator an additional security or securities complying with the requirements of this clause 3.15 which enables the Market Operator to increase the WESM Member's trading limit to a level which exceeds the Market Operator's actual exposure to the WESM Member; or*

(b) *Prepaying a portion of the amount payable or which will become payable in respect of previous billing periods sufficient to reduce the Market Operator's actual exposure to the WESM Member to below the WESM Member's trading limit.*

3.15.10.3 The period within which a *margin call* must be satisfied under clause 3.15.10.2 is:

(a) If the *margin call* is made on a *business day* before 10:00 am, then the period commences at the time the *margin call* is made and finishes at 3:00 pm on that *business day*; and

(b) If clause 3.15.10.3 (a) does not apply, then the period commences when the *margin call* is made and ends at 10:00 am on the first *business day* to occur after the *margin call* is made.

3.15.10.4 For the purposes of the *WESM Rules*, a prepayment under clause 3.15.10.2(b) is taken to relate to the earliest *billing period* in respect of which the relevant *WESM Member* owes the *Market Operator* an amount of money under the *WESM Rules* and, if the amount the *WESM Member* owes under the *WESM Rules* in respect of that *billing period* is less than the amount of the prepayment, then the excess is taken to relate to the *billing periods* occurring immediately after the earliest *billing period* in respect of

which the relevant *WESM Member* owes the *Market Operator* an amount of money under the *WESM Rules* in chronological order until there is no excess.

3.15.10.5 If a *WESM Member* fails to satisfy a *margin call* by providing an additional security or making a prepayment under clause 3.15.10.2 within the time referred to in that clause, then the *Market Operator* shall give the *WESM Member* a *suspension notice*.

#### 3.15.11 Confidentiality

All information provided by a *WESM Member* in relation to its financial circumstances shall be treated by the *Market Operator* as *confidential information* in accordance with clause 5.2.

## CHAPTER 4 METERING

### 4.1 SCOPE OF CHAPTER 4

This chapter 4 sets out the:

- (a) Obligations of *Trading Participants*;
- (b) Requirements in relation to the installation, use and security of *meters*;
- (c) Manner in which *metering data* is to be used and managed;
- (d) Method of deregistration of *Metering Services Providers*;
- (e) Manner in which *metering databases* are to be managed; and
- (f) Manner in which new technologies are to be adopted.

## 4.2 APPLICATION OF CHAPTER

This chapter 4 applies to:

- (a) A *Customer* in respect of any *connection point* through which it purchases electricity from the *spot market*;
- (b) A *Generation Company* in respect of a *connection point* through which it sells electricity to the *spot market*;
- (c) *Metering Services Providers* in respect of *metering installations* for which they are responsible; and
- (d) All *WESM members* as far as applicable.

## 4.3 OBLIGATIONS OF TRADING PARTICIPANTS

### 4.3.1 Obligations

4.3.1.1 Before a *Trading Participant* who is a *Direct WESM Member* will be permitted by the *Market Operator* to participate in the *spot market* in respect of a *connection point*, the *Trading Participant* shall ensure that:

- (a) Each of its *connection points* has a *metering installation*;
- (b) Each *metering installation* has been installed in accordance with this chapter 4 and in accordance with the *Grid Code* and *Distribution Code*; and

(c) Each *metering installation* is registered with the *Market Operator*.

4.3.1.2 The *Market Operator* may refuse to permit a *Trading Participant* who is a *Direct WESM Member* to participate in the *spot market* in respect of any *connection point* if the *metering installation* at that *connection point* does not comply with the provisions or requirements of this chapter 4, the *Grid Code* and *Distribution Code*.

4.3.1.3 The *Market Operator* shall promptly advise the *ERC* of any refusal made under clause 4.3.1.2.

4.3.2 Election of a *Metering Services Provider* by a *Trading Participant*

4.3.2.1 A *Trading Participant* who is a *Direct WESM Member* shall:

- (a) Elect a *Metering Services Provider* who will have responsibility for arranging for the provision, installation, testing, calibration and maintenance of each *metering installation* for which that *Trading Participant* is financially responsible;



- (b) Enter into an agreement with the *Metering Services Provider(s)* which includes the terms and conditions for the provision, installation and maintenance of the relevant *metering installation* by the *Metering Services Provider*; and
- (c) Provide the *Market Operator* with the relevant details of the *metering installation* in accordance with Appendix B2 within 10 *business days* of entering into an agreement with the *Metering Services Provider(s)* under clause 4.3.4(b).

#### 4.3.3 Metering Services Provider Obligations

The *Metering Services Provider* shall:

- (a) Ensure that its *metering installations* are provided, installed, tested, calibrated and maintained in accordance with this chapter 4, the *Grid Code* and *Distribution Code* and all applicable laws, rules and regulations;
- (b) Ensure that the accuracy of each of its *metering installations* complies with the requirements of chapter 4 and the *Grid Code* and *Distribution Code*; and

- (c) If the *Market Operator* requires, arrange for the provision of remote monitoring facilities to alert the *Market Operator* of any failure of any components of the *metering installation* which might affect the accuracy of the *metering data* derived from that *metering installation*.

#### 4.4 REGISTRATION OF METERING SERVICES PROVIDERS

4.4.1 Other than the *TRANSCO*, a *Metering Services Provider* is a person or an entity who:

- (a) Is *authorized* by the *ERC* to provide metering services;
- (b) Is registered with the *Market Operator* as a *Metering Services Provider*; and
- (c) Is required to have the qualifications and adhere to any performance standards specified by the *Market Operator* in relation to *Metering Services Providers*.

4.4.2 Subject to clause 4.3.3.3, a *Generation Company* or *Customer* which is involved in the trading of *energy* shall not be registered as a *Metering Services Provider* for any *connection point* in respect of which the *metering data* relates to its own use of *energy*.

4.4.3 If a *Trading Participant* is a *Customer* and also a *Network Service Provider*, the *Trading Participant* may register as a *Metering Services Provider* only for connection points that it does not own.

## 4.5 METERING INSTALLATION

### 4.5.1 Metering Installation Components

A *metering installation* shall:

- (a) Be accurate in accordance with this chapter 4 and the *Grid Code* and *Distribution Code*;
- (b) Have facilities to enable *metering data* to be transmitted from the *metering installation* to the *metering database*, and be capable of communication with the *metering database*; This requirement may be relaxed during the operation of the *interim WESM*.
- (c) Contain a device which has a visible or an equivalently accessible display of *metering data* or which allows the *metering data* to be accessed and read at the same time by portable computer or other equipment of a type or specification reasonably acceptable to all entities who are entitled to have access to that *metering data*;
- (d) Be secure;
- (e) Have electronic data recording facilities such that all *metering data* can be measured and recorded in *trading intervals*;
- (f) Be capable of separately registering and recording flows in each direction where bi-directional *active energy* flows occur;

- (g) Have a *meter* having an internal or external *data logger* capable of storing the *metering data* for at least 60 days and have a back up storage facility enabling *metering data* to be stored for 48 hours in the event of external power failure; and
- (h) Have an *active energy meter*, and if required in accordance with the *Grid Code* and *Distribution Code*, a *reactive energy meter*, having both an internal or external *data logger*.

### 4.5.2 Location of Metering Point

4.5.2.1 The *Metering Services Provider* shall ensure that the *metering point* is located as close as practicable to the *connection point*.

4.5.2.2 The *Trading Participant*, the *Network Service Provider* and the *Market Operator* shall use their best endeavors to agree to adjust the *metering data* that is recorded in the *metering database* to allow for physical losses between the *metering point* and the relevant *connection point*.

4.5.2.3 The *metering installation* shall be accessible to the *Metering Service Provider* at all times.

### 4.5.3 Meter Accuracy

The class of *metering installation* and the accuracy requirements for a *metering point* are to be determined by the *PEM Board* in accordance with the *Grid Code* and *Distribution Code* and according to the annual amount of *active energy* that passes through the *metering point* of that *Trading Participant*.

#### 4.5.4 Use of Meters

4.5.4.1 The registered *metering installation* shall be used by the *Market Operator* as the primary source of *metering data* for billing purposes.

4.5.4.2 Notwithstanding any other provision of this clause 4.4, the *Market Operator* will not be liable to any person or entity in respect of any inaccuracies, discrepancies or other defects in *metering data*, including *metering data* which is stored in the *metering database* provided that these do not arise from the gross negligence or wilful misconduct of the *Market Operator*.

4.5.4.3 Where a *metering installation* is used for purposes in addition to the provision of *metering data* to the *Market Operator* then:

- (a) That use shall not be inconsistent with, or cause any *WESM Member* to breach,

any requirements of the *WESM Rules*, the *Grid Code* and *Distribution Code* or any applicable laws; and

- (b) The *Metering Services Provider* shall coordinate with the entities that use the *metering installation* for such other purposes to ensure that clause 4.4.4.3 (a) is complied with.

#### 4.5.5 Security of Metering Equipment

4.5.5.1 The *Metering Services Provider* shall use reasonable endeavors to protect the *metering installation* from unauthorized interference both intentional and inadvertent by providing secure housing for *metering* equipment or otherwise ensuring that security at the *metering point* is adequate to protect against such interference.

4.5.5.2 If a *WESM Member* has reason to believe that the *metering installation* has been interfered with or the accuracy thereof might have been affected by any tampering, he shall inform the *Metering Services Provider* who shall test the *metering*

*installation* to ensure that the *metering equipment* operates within the applicable accuracy parameters described in the *Grid Code* and *Distribution Code*.

4.5.5.3 If evidence of tampering with a *metering installation* is found or discovered by a *WESM Member*, all *affected Participants* shall be notified of that fact by that *WESM Member* and the *PEM Board* as soon as reasonably possible.

4.5.5.4 The *PEM Auditor*, in consultation with the *Market Operator* and *Metering Services Providers*, shall review the security arrangements and requirement of *metering installations* annually.

#### 4.5.6 Security of Metering Data Held in a Metering Installation

The *Metering Services Provider* shall ensure that *metering data* held in a *metering installation* is protected from local or remote electronic access or manipulation of data by the installation of suitable security electronic access controls (including, if required by the *Market Operator*, passwords).

#### 4.5.7 Performance of Metering Installations

4.5.7.1 The *Metering Services*

*Provider* shall use all reasonable endeavors to ensure that *metering data* is capable of being transmitted to the *metering database* from its *metering installations*:

(a) Within the applicable accuracy parameters described in the *Grid Code* and *Distribution Code*; and

(b) Within the time required for *settlement*, at a level of availability of at least 99% per annum, or as otherwise agreed between the *Market Operator* and the *Metering Services Provider*.

4.5.7.2 If a *metering installation* malfunction or defect occurs, the *Metering Services Provider* shall ensure that repairs shall be made as soon as practicable and in any event within two *business days*, unless extended by the *Market Operator*.

4.5.7.3 A *WESM Participant* who becomes aware of a *metering installation* malfunction or other defect shall advise the *Market Operator* within 3 hours from the time it was detected.

#### 4.5.8 Meter Time

4.5.8.1 The *Metering Services Provider* shall ensure that all *metering installation* and *data logger* clocks are referenced to Philippines Standard Time.

4.5.8.2 The *metering database* time shall be set within an accuracy of plus or minus five (5) seconds of Philippines Standard Time.

### 4.6 METERING DATA

#### 4.6.1 Changes to Metering Data

The *Metering Services Provider* shall not make, cause or allow any alteration to the original stored data in a metering installation. It shall also use reasonable endeavors to ensure that no other person or entity does the same.

#### 4.6.2 Data Transfer and Collection

4.6.2.1 The *Market Operator* shall collect *metering data* from all *metering installations* from which *metering data* is required for *settlement* purposes unless otherwise agreed by the *Market Operator* and the *affected Participants*.

4.6.2.2 Each *WESM Member* shall use its reasonable endeavors to ensure that the *Market Operator* is given access

to, or is provided with, the *metering data*.

4.6.2.3 The *Metering Services Provider* shall, at its own cost, ensure that *metering data* derived from a *metering installation* for which it is responsible shows the time and date at which it is recorded and is capable of being transmitted from the *metering installation* to the *metering database* in accordance with the *Market Operator's* reasonable requirements.

4.6.2.4 The *Market Operator* may use *data collection systems* to transfer *metering data* to the *metering databases*.

4.6.2.5 Without prejudice to the generality of this clause 4.5, the *Metering Services Provider* shall ensure that each of its *metering installations* have adequate communication facility that will enable the *Market Operator* to obtain remote access to the *metering data* from the *metering database*. This requirement, however, may be relaxed during the initial operation of the *WESM*.

4.6.2.6 In cases where the metering installation has no capability to transmit the *metering*

*data* electronically to the metering database, the *WESM Participant* must use its reasonable endeavors to ensure that the *Market Operator* is given alternative access to, or is provided with, the metering data in accordance with the procedures established under the *Grid Code* and *Distribution Code*.

#### **4.7 DEREGISTRATION OF METERING SERVICES PROVIDERS**

##### **4.7.1 Settlement with inaccurate metering information**

The *Market Operator* shall develop a detailed process for settling accounts retroactively to correct incorrect metering information and market settlements that results from meter tampering, meter bypass, meter failure, data loss, unethical conduct, excessive inaccuracy or other causes.

##### **4.7.2 Sanctions for inaccurate metering information**

The *Market Operator* shall develop a process of penalties and sanctions for *Meter Services Providers* and *WESM Participants* whose *meter data* is incorrect beyond reasonable limits for whatever reason.

##### **4.7.3 Notice following material breach of WESM Rules**

If a *Metering Services Provider* materially breaches the *WESM Rules*, the *Market Operator* shall send to that *Metering Services*

*Provider* notice in writing setting out the nature of the breach and if the *Metering Services Provider* remains in breach for a period of more than 7 *business days* after notice from the *Market Operator*, the *Market Operator* may deregister the *Metering Services Provider*.

##### **4.7.4 Deregistration following unethical act**

The *Market Operator* may deregister a *Metering Services Provider* for unethical act or behavior.

##### **4.7.5 Effect of deregistration for unethical act**

If the *Market Operator* deregisters a *Metering Services Provider* in accordance with clause 2.6.2 and subject to clause 2.7, the *Market Operator* shall:

- (a) Notify the *ERC* and the *WESM Participants* of this action and basis for decision; and
- (b) *Publish* details of the deregistration.

#### **4.8 DATABASES**

##### **4.8.1 Installation Databases**

4.8.1.1 The *Metering Services Provider* shall create, maintain and administer an *installation database* in relation to all its *metering installations*.

4.8.1.2 The *Metering Services Provider* shall ensure that each *affected*

*Participant* and the *Market Operator* is given access to the information in its *installation database* at all reasonable times and:

(a) In the case of data sixteen months old or less, within seven *business days* of receiving written notice from the person or entity seeking access; and

(b) In the case of data more than sixteen months old, within thirty days of receiving written notice from the person or entity seeking access.

4.8.1.3 The *Metering Services Provider* shall ensure that its *installation database* contains the information specified in Appendix B2.

#### 4.8.2 Metering Database

4.8.2.1 The *Market Operator* shall create, maintain and administer a *metering database*, which shall include a *metering register* containing information for each *metering installation* registered with the *Market Operator*.

4.8.2.2 The *metering database* shall include *metering*

*data*, *energy data*, data substituted in accordance with this clause 4.7 and all calculations made for *settlement* purposes.

4.8.2.3 Data shall be stored in the *metering database*:

(a) For 16 months in accessible format; and

(b) For 10 years in archive.

#### 4.8.3 Rights of Access to Metering Data

The only entities entitled to have either direct or remote access to *metering data* on a read only basis from the *metering database* or the *metering register* in relation to a *metering point* are:

(a) Each *Trading Participant* whose *settlement amounts* are determined by reference to quantities of *energy* flowing through that *metering point*;

(b) The *Metering Services Provider* who is responsible for the *metering installation* at that *metering point*;

(c) A *Network Service Provider* associated with the *metering point*;

(d) The *Market Operator* and its authorized agents; and

(e) Any *Customer* who purchases electricity at the associated *connection point*;

(f) The *Market Surveillance Committee*; and

(g) The *ERC*.

#### 4.8.4 Confidentiality

Subject to clause 4.7.3, *metering data* is confidential and each *WESM Member* and *Metering Services Provider* shall ensure that such data is treated as *confidential information* in accordance with the *WESM Rules*.

#### 4.8.5 Payment for Access to Metering Data

All reasonable costs (including, without limitation, telecommunications charges) incurred by the *Metering Services Provider* in providing access to *metering data* at a *metering installation* or by the *Market Operator* in providing access to information in the *metering database* shall be paid by the *WESM Member* to whom the *metering data* or information was provided.

### 4.9 DATA VALIDATION AND SUBSTITUTION

The *Market Operator* is responsible for the validation and substitution of *metering data* after being furnished settlement-ready *metering data* by the *Metering Services Provider* and shall develop data validation procedures in consultation with *WESM Participants* and in accordance with Appendix C1.2 (d).

### 4.10 PROCESSES AND REVIEW

The *Market Operator* shall undertake a periodic review of the provisions of this chapter 4 in accordance with the public consultation procedures, including but

not limited to:

(a) New technologies and the impact of new technologies on and in relation to technical standards for metering in the *WESM Rules*, the *Grid Code* and *Distribution Code*;

(b) Contestability in the provision and types of *meters* used; and

(c) Whether the provisions of this chapter 4 have the effect of eliminating the use of alternative types of *meters*.

### 4.11 TRANSITORY PROVISION

During the initial operation of the *WESM*, the *TRANSCO* shall provide the services required of the *Metering Services Provider*, but this shall not exclude other entities from doing the same, provided they meet the requirements provided herein.

## CHAPTER 5: MARKET INFORMATION AND CONFIDENTIALITY

### 5.1 SCOPE OF CHAPTER 5

This chapter 5 sets out:

(a) Procedures for dealing with *spot market* information, including:

(1) Systems and procedures for the provision and storage of *spot market* information; and

(2) A requirement to audit *spot market* information; and

(b) Procedures for dealing with *confidential information*, including

(1) Exceptions to the general rule that *confidential information*



shall not be disclosed; and

- (2) Conditions of disclosure of *confidential information*.

## 5.2 MARKET INFORMATION AND CONFIDENTIALITY

### 5.2.1 Provision of Information

5.2.1.1 The provisions of this chapter are always subject to the rights and obligations of the *Market Operator* and *WESM Members* in relation to *confidential information* as set out in clause 5.3.

5.2.1.2 In addition to any specific obligation of the *Market Operator* under the *WESM Rules* to provide information, the *Market Operator*:

- (a) Shall, upon written request, make available to *Trading Participants* any information concerning the operation of the *spot market* provided that said information is not confidential or commercially-sensitive; and
- (b) May charge a fee reflecting the cost of providing such information.

5.2.1.3 The *Market Operator* shall make public and electronically post

information on the *market price* as well as reasons for any significant movement thereon and provide hard copies of such informational materials upon request and reimbursement of cost to produce the same.

5.2.1.4 The *Market Operator* shall make available to the *ERC* all pertinent information which would help the latter effectively perform its regulatory and oversight functions.

5.2.1.5 The *Market Operator* shall make available to the *DOE* all pertinent information which would help the latter effectively perform its energy policy-making function.

### 5.2.2 Systems and Procedures

5.2.2.1 Information required, covered or otherwise contemplated by the *WESM Rules* such as those provided by *WESM Members* to the *Market Operator* or those provided by the *Market Operator* to *WESM Members* shall be provided by means of an *electronic communication system* unless the *WESM Rules* specify otherwise or changed or modified by the *Market Operator*.

- 5.2.2.2 Information provided by means of an *electronic communication system* shall be in accordance with the templates included in the said *electronic communication system* unless otherwise changed or modified by the *Market Operator* as approved by the *PEM Board*.
- 5.2.2.3 As far as practicable, the *Market Operator* shall incorporate a binding acknowledgment receipt in its *electronic communication system* which would establish the time the pertinent information is actually received.
- 5.2.2.4 Information is deemed to be *published* by the *Market Operator* when the information is posted on the *market information website*.
- 5.2.2.5 The *Market Operator* shall maintain and *publish electronic communication procedures* under which:
- (a) Information shall be provided by *WESM Members* to the *Market Operator*;
  - (b) Information shall be provided by the *Market Operator* to *WESM Members*; and
- (c) Information *published* on the *market information website* may be accessed by *Trading Participants*.
- 5.2.2.6 From time to time, the *Market Operator*, in consultation with *WESM Members*, may review and alter:
- (a) The requirements for *electronic communication systems*; and
  - (b) *Electronic communication procedures*.
- 5.2.2.7 The *Market Operator* shall provide the *ERC* and *DOE* all necessary facilities to effectively monitor the operation of the *WESM*, on realtime and for review purposes.
- 5.2.3 Participant Data
- The *Market Operator* shall maintain, periodically update as it considers reasonably necessary from time to time and *publish*:
- (a) A list of all *WESM Members* identifying those of them that are *Trading Participants*;
  - (b) A list of all membership applicants to the *WESM* and identifying those applying to become a *Trading Participant*;

- (c) A list of all former *WESM Members* and the time that each ceased to be *WESM Members*; and
  - (d) A list of all suspended *Trading Participants* and the time at which each was suspended.
- 5.2.4 Planning and Design Data
- 5.2.4.1 Consistent with the *Grid Code*, the *System Operator* is to maintain a register of data provided by *Trading Participants* and *Network Service Providers* for planning and design purposes.
  - 5.2.4.2 The *System Operator* shall provide on a regular basis a copy of the register of data prepared under clause 5.2.4.1 to the *Market Operator* in a form specified by the *Market Operator*.
- 5.2.5 Information Records
- The *Market Operator* shall retain all information provided to it under the *WESM Rules* for at least ten years in a form it deems appropriate for reasonable access as may be required by the *ERC* or the *DOE*.
- 5.2.6 Market Audit
- 5.2.6.1 The *Market Operator* shall arrange for a *spot market* audit to be performed once each quarter, or such other period as determined by the *Market Operator* in consultation with the *PEM Auditor*.
  - 5.2.6.2 The *spot market* audit shall cover and review compliance by the *Market Operator* with its procedures and the effectiveness and appropriateness of systems utilized in the operation of the *spot market*, including but not limited to:
    - (a) Valid audit certificates for the current versions of all numeric software;
    - (b) The calculations and allocations performed by the *metering* and *settlements* systems;
    - (c) Billing and information systems;
    - (d) The scheduling and *dispatch* processes;
    - (e) The processes for software management; and
    - (f) The *Market Operator's* compliance with the *WESM Rules*.
  - 5.2.6.3 The *PEM Auditor* shall prepare a report on the results of the *spot market* audit.

5.2.6.4 Following consideration by the *Market Operator*, the *spot market* audit report shall be made available by the *Market Operator* to the *ERC*, the *PEM Board* and *WESM Members*.

5.3.1.3 Each *WESM Member* and the *Market Operator* shall use all reasonable endeavors to:

- (a) Prevent unauthorized access to *confidential information* which is in its possession or control; and
- (b) Ensure that any person to whom it discloses *confidential information* observes the provisions of this clause 5.3 in relation to that information.

### 5.3 CONFIDENTIALITY

#### 5.3.1 Confidentiality

5.3.1.1 Each *WESM Member* and the *Market Operator* shall keep confidential any *confidential information* which comes into their control, possession or otherwise be aware of.

5.3.1.2 A *WESM Member* and the *Market Operator*:

- (a) Shall not disclose *confidential information* to any person or entity except as permitted by the *WESM Rules*;
- (b) Shall only use or reproduce *confidential information* for the purpose for which it was disclosed or for a purpose contemplated by the *WESM Rules*; and
- (c) Shall not permit unauthorized persons to have access to *confidential information*.

#### 5.3.2 Exceptions

Subject to clause 5.3.3.1, this clause 5.3 does not prevent:

- (a) The disclosure of information (confidential or otherwise) between any one or more of the following:
  - (1) The *ERC* and the *DOE*;
  - (2) The *System Operator*;
  - (3) The *Market Surveillance Committee*; and
  - (4) Any other person or entity, including but not limited to a committee appointed by the *PEM Board* in accordance with the *WESM Rules*, for the purposes of:

- (5) The operation, security and planning of the *power system* in accordance with the *Grid Code*;
  - (6) Complying with any other instrument (including any *contractual instrument* or *understanding* governing the relationship between the parties detailed in clauses 5.3.2 (a) (1) to (a) (5)); and
  - (7) Any other circumstance which, in the reasonable opinion of the *Market Operator*, is necessary to assist the *Market Operator* in establishing and operating the *WESM* in accordance with the *WESM* objectives;
- (b) The disclosure, use or reproduction of information if the relevant information is at that time generally and publicly available other than as a result of a breach of this clause 5.3;
- (c) The disclosure of information by a *WESM Member* or the *Market Operator*, or by persons to whom the *WESM Member* or the *Market Operator* (as the case may be) has disclosed that information to such as:
- (1) An employee or officer of the *WESM Member*; or
  - (2) A legal or other professional adviser, auditor or other consultant of the *WESM Member* or the *Market Operator* (as the case may be); or
  - (3) Similar persons or entities,
- for purposes of complying with the *WESM Rules*, or advising the *WESM Member* or the *Market Operator* in relation to the *WESM Rules* proved that the person receiving the information undertakes in writing not to further disclose that information to any other person;
- (d) The disclosure, use or reproduction of information with the written consent of the person or persons who provided the relevant information under the *WESM Rules*;
- (e) The disclosure, use or reproduction of information to the extent required by law or by a lawful requirement of:
- (1) The *ERC* and the *DOE*; or
  - (2) Any government authority having jurisdiction over a *WESM Member* or the *Market Operator*;

- (f) The disclosure, use or reproduction of information if necessary in accordance with the lawful requirements of or in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanisms relating to the *WESM Rules*, or for the purpose of advising a person in relation thereto provided that those to whom the information is disclosed undertakes in writing not to further disclose that information to any other person;
- (g) The disclosure of information to the extent required to protect the safety of personnel or equipment;
- (h) The disclosure, use or reproduction of information by or on behalf of a *WESM Member* or the *Market Operator* to the extent reasonably required in connection with the *WESM Member's* or the *Market Operator's* financing arrangements (as the case may be), investment in a *WESM Member* or a disposal of a *WESM Member's* assets provided that those to whom the information is disclosed signs a written undertaking not to further disclose that information to any other person;
- (i) The disclosure of information to the *ERC* and *DOE* and any other government authority having jurisdiction over a *WESM Member*, pursuant to the *WESM Rules* or otherwise.
- 5.3.3 Conditions
- 5.3.3.1 Any entity who receives information disclosed in accordance with clause 5.3.2 (a):
- (a) Shall not disclose the information to any person, except as provided by the *WESM Rules*; and
- (b) Shall only use the information for the purposes for which it was disclosed under clause 5.3.2(a).
- 5.3.3.2 In the case of a disclosure under clause 5.3.2(c), 5.3.2(f) or 5.3.2(i), the *WESM Member* or the *Market Operator* (as the case may be) who wishes to make the disclosure, shall prior to making the disclosure, inform the proposed recipient of the information that it is *confidential information* and shall take appropriate precautions, including at the very least securing a written undertaking from the recipient that such recipient will keep the information confidential to ensure that the recipient keeps the information confidential

in accordance with the provisions of this clause 5.3 and does not use the information for any purpose other than that permitted under clause 5.3.2.

#### 5.3.4 Indemnity to the Market Operator

Each *WESM Member* indemnifies the *Market Operator* against any claim, action, damage, loss, liability, expense or outgoing which the *Market Operator* pays, suffers, incurs or is liable for in respect of any breach of this clause 5.3 by that *WESM Member* or any officer, agent or employee of that *WESM Member*: Provided that no *WESM Participant* shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the *Market Operator*.

#### 5.3.5 Survival

Notwithstanding any other provision of the *WESM Rules*, a person shall continue to comply with this clause 5.3 after that person has ceased to be a *WESM Member*.

#### 5.3.6 The Market Operator Information

The *Market Operator* shall develop and, to the extent practicable, implement a procedure approved by the *PEM Board* to:

- (a) Protect information which it acquires pursuant to the *Market Operator* functions from use or access which is contrary to the provisions of the *WESM Rules*;

- (b) Protect information which is commercially sensitive from use or access by members of the *PEM Board* who are officers, directors or employees of a *WESM Member*; and

- (c) Disseminate such information in accordance with its rights, powers and obligations in a manner, which promotes ease of entry into and the orderly operation of the *spot market*.

## **CHAPTER 6: INTERVENTION AND MARKET SUSPENSION**

### **6.1 SCOPE OF CHAPTER 6**

This chapter 6 sets out:

- (a) The procedures which shall be established by the *Market Operator*, *System Operator* and *WESM Participants* to ensure that they are able to take all necessary actions in an *emergency*;
- (b) The procedures to be followed by the *Market Operator*, *System Operator* and *WESM Participants* in an *emergency*;
- (c) The procedures which are to take effect in the event of a threat to *system security*; and
- (d) The circumstances and manner in which the *ERC* through the *Market Operator* may *intervene* or suspend the *spot market*.

### **6.2 OVERVIEW**

#### 6.2.1 Preparation and Responses

- 6.2.1.1 The *System Operator* is responsible for giving directions and coordinating the actions, which are to be taken by *WESM Participants* and *Market Operator* when there is *market suspension* or *intervention*.
- 6.2.1.2 *Intervention* is warranted when the *grid* is in extreme state condition as established in the *Grid Code* arising from:
- (a) An *emergency*;
  - (b) A threat to *system security*; or
  - (c) An event of *force majeure*.
- 6.2.1.3 During *intervention* or *market suspension*, the *System Operator* and *Market Operator* shall coordinate their actions to restore normal operation of the power system and the market.
- 6.2.1.4 *WESM Participants* acknowledge that:
- (a) The operation of the *power system* involves risks to public safety and property and therefore accept that the provisions of this chapter 6 are appropriate and reasonable;
  - (b) Their business interests will be subordinate to the need for the *Market Operator* and *System Operator* to implement *emergency* procedures in accordance with the *Grid Code* and clause 6.3.2 and to make declarations and issue *emergency directions* under clause 6.5 in an *emergency*;
  - (c) Subject to clause 6.2.1.1, the *System Operator* shall issue *emergency directions* in accordance with the *Grid Code*, and shall report such action to the *Market Operator*.
- 6.2.2 Exemption from Liability due to Market Suspension and Intervention
- 6.2.2.1 In the events of *market suspension* or *intervention*, any action of the *ERC*, *Market Operator*, *System Operator* or a *WESM Participant* in compliance with the emergency procedures provided in this Chapter shall not constitute a breach of the *WESM Rules*, except in the case of an act committed in bad faith or gross



negligence shall not be liable for any loss incurred by a *WESM Participant* as a result of any action taken by the *System Operator* or *Market Operator* under this chapter 6.

6.2.2.2 Nothing in this chapter 6 is to be taken to limit the ability of the *System Operator* or *Market Operator* to take any action or procedure under this chapter 6 which either the *System Operator* or *Market Operator* considers in their absolute discretion to be necessary to protect the public or property.

### 6.2.3 Administered Price Cap

During *market suspension* and *intervention*, the *Market Operator* shall impose an *administered price cap* to be used as basis for settlements.

Prior to the *spot market commencement date*, the *Market Operator* shall develop and publish an *administered price cap* to be used during *market suspension* or *intervention* of the *spot market*. Said *administered price cap* is to be endorsed by the *PEM Board* for *ERC* approval.

## 6.3 EMERGENCIES

### 6.3.1 Emergency

6.3.1.1 The *System Operator* shall declare an *emergency* when

it determines the existence of a situation which has an adverse material effect on electricity *supply* or which poses as a significant threat to *system security*. The *System Operator* shall report an *emergency* to the *ERC*.

6.3.1.2 An *emergency* may include:

(a) A significant electricity *supply* capacity shortfall, being a condition where there is insufficient *generation* or *supply* options available to securely *supply* in one or more regions of the *power system* likely to be affected by the event;

(b) A *power system* disturbance due to an outage in the *transmission network* or *generating system* for which market processes are inadequate for recovery;

(c) A significant environmental phenomenon, including weather, storms or fires which are likely to or are significantly affecting the *power*

- system* for which market processes are inadequate for recovery;
- (d) A *system blackout* or significant *power system* *undervoltage* condition;
  - (e) Material damage to a *distribution system* which has or is likely to adversely affect the operation of the *transmission system* or to render the *spot market* ineffective; and
  - (f) A situation, which the *Government* proclaims or declares an *emergency*.
- 6.3.1.3 A *WESM Participant* shall notify the *System Operator* as soon as practicable of:
- (a) Any event or situation of which the *WESM Participant* becomes aware where, in the reasonable opinion of the *WESM Participant*, that event or situation is of a kind described in clause 6.3.1.2; and
  - (b) Any action taken by the *WESM Participant* under its
- safety procedures or otherwise in response to that event or situation, in accordance with the *Grid Code* and *Distribution Code*.
- 6.3.1.4 The *System Operator* may, from time to time, specify procedures for communicating the existence of an *emergency* and all relevant information relating to the *emergency* to the *WESM Participants*.
- 6.3.1.5 Notwithstanding any other provision contained in these Rules, the *ERC*, *DOE* or the *PEM Board* may investigate or require explanations regarding an *emergency direction* given by the *System Operator*.
- 6.3.1.6 Each *WESM Participant* shall use its best endeavors to ensure that its *safety plan* permits it to comply with *emergency directions*.
- 6.3.1.7 When the *System Operator* has determined that an *emergency* or the effect thereof has ended, the *System Operator* shall notify the *Market Operator* who in turn shall notify all *WESM Participants* and the *DOE* that the *emergency*

or the effect of such *emergency* has ended.

### 6.3.2 Emergency Procedures

6.3.2.1 During the period when the *power system* may be or is affected by an *emergency* the *System Operator* shall carry out actions, in accordance with the *system security and reliability guidelines* and its obligations (if any) concerning *sensitive loads* to:

- (a) Identify the impact of the *emergency* on *system security* in terms of the capability of *generating units, transmission systems* or *distribution systems*; and
- (b) Identify and implement the actions required to restore the *power system* to its satisfactory operating state.

6.3.2.2 Emergency procedures are the procedures to be taken by or at the direction of the *System Operator* to:

- (a) Maintain system security;
- (b) Avert or reduce the effect of an *emergency*;

(c) Issue notifications and warnings to *Market Operator*, the *PEM Board*, the *DOE* and *ERC* where appropriate; and

(d) Restore the *power system* to a satisfactory operating state immediately after an *emergency*.

6.3.2.3 Emergency procedures may require a *WESM Participant* to take action, or not to take action, in accordance with *emergency directions* given by the *System Operator*.

6.3.2.4 Prior to *spot market commencement date*, the *System Operator* in consultation with the *Market Operator* shall:

(a) Develop appropriate *emergency procedures* in accordance with the *Grid Code* and *Distribution Code*. Such procedures shall be subject to approval of the *PEM Board*; and

(b) Publish details of the approved *emergency procedures*.

6.3.2.5 The *System Operator* shall, in consultation with the *Market*

*Operator*, review the emergency procedures from time to time.

fullest extent possible without causing the harms described in clause 6.3.2.6 (a).

6.3.2.6 Each *WESM Member* shall promptly:

(a) Comply with any *emergency direction* given by the *System Operator*, including *emergency directions* requiring the *disconnection* of equipment from a *transmission system* or *distribution system* for *reliability* purposes, unless the *WESM Participant* reasonably believes that an *emergency direction* given by the *System Operator* poses a real and substantial risk of damage to its equipment, to the safety of its employees or the public, or of undue injury to the environment;

(b) Notify the *System Operator* if it intends not to follow the *emergency direction* for any of the reasons described in clause 6.3.2.6 (a); and

(c) Comply with the *System Operator's* direction to the

6.3.2.7 The *System Operator* shall make available a copy of the emergency procedures to all *WESM Participants* within seven (7) days after each occasion on which the emergency procedures have been updated.

#### 6.4 EMERGENCY PLANNING BY WESM PARTICIPANTS

6.4.1 WESM Participant Emergency Contacts

6.4.1.1 Each *WESM Participant* shall provide the *Market Operator* and *System Operator* with:

(a) An effective means of communication by which a representative of the *WESM Participant* may be contacted by the *Market Operator* 24 hours a day; and

(b) The name and title of the *WESM Participant's* representative who can be contacted by using that means of communication.

6.4.1.2 The representative of each *WESM Participant* nominated under clause 6.4.1.1 shall be a person

having appropriate authority and responsibility within the *WESM Participant's* organization to act as the primary contact for the *System Operator* in the event of an *emergency*.

6.4.1.3 Each *WESM Participant* shall immediately notify the *Market Operator* and *System Operator* of a change to the details provided under clause 6.4.1.1.

#### 6.4.2 WESM Participant Procedures

6.4.2.1 Each *Trading Participant* and *Network Service Provider* shall establish and maintain its own internal safety procedures necessary to enable it and, its *Customers*, to comply with *emergency directions* under this chapter.

6.4.2.2 Each *Trading Participant* and *Network Service Provider* shall ensure that the safety procedures it establishes under clause 6.4.2.1 are consistent with the emergency procedures established under clause 6.3.2.4 and the *Grid Code*.

#### 6.4.3 Emergency Procedures Awareness

6.4.3.1 Each *Trading Participant* shall at all times ensure that all of its responsible

officers and staff and their *Customers*, are familiar with both the safety and the emergency procedures.

6.4.3.2 For the purposes of clauses 6.4.3.1 and 6.5.1, responsible officers and staff are those whose functions or areas of responsibility are such that they are likely to be required to make decisions or take action in an *emergency*.

### 6.5 RESPONSE TO AN EMERGENCY

#### 6.5.1 Declarations and Directions in an Emergency

6.5.1.1 During an *emergency*:

(a) The *System Operator* shall, in coordination with the *Market Operator*, issue *emergency directions* as it reasonably considers necessary, which may include, but need not be limited to, directions to:

(1) Switch off, or re-route, *energy* delivery from a *Generation Company*;

(2) Call equipment into service;

(3) Take equipment out of service;

- (4) Commence operation or maintain, increase or reduce *active* or *reactive power* output; in relation to *vital loads*, determine a rotating *outage* plan, and rotate any *load shedding* requirements.
  - (5) Curtail, shut down or otherwise vary operation or output; 6.5.1.2 When an *emergency* arises, the *System Operator* shall:
    - (a) Immediately notify the *Market Operator*;
    - (b) Notify the *ERC* and the *DOE*, as soon as reasonably practicable;
    - (c) Notify *WESM Participants*, as soon as reasonably practicable, of the commencement, nature, extent and expected duration of the *emergency* and the way in which the *System Operator* reasonably anticipates it will act in response to the *emergency*; and
    - (d) Notify the *ERC*, the *DOE*, and *WESM Participants* of any material changes in the nature, extent and expected duration of an *emergency*.
  - (6) Shed or restore *load*; and
  - (7) Subject to clause 6.8, do any other act or thing necessary to be done for reasons of public safety or the security of the *power system* or of undue injury to the environment.
- (b) The *System Operator* shall also:
- (1) Implement any *load shedding* in a manner consistent with the *system security and reliability guidelines*; and
  - (2) To the extent possible and in accordance with the *Market Operator's* responsibility
- 6.5.1.3 Upon being notified of an *emergency*, each

*WESM Participant* shall advise all responsible officers and staff (as defined in clause 6.4.3.2) and their *Customers*, of the existence and nature of the *emergency*.

in the relevant circumstances;

(c) This chapter;

(d) Any procedures developed by the *System Operator*; or

6.5.1.4 Each *WESM Participant* shall, subject to clause 6.5.1.5:

(e) An *emergency direction* given by the *System Operator*, the *System Operator* shall decide which of those requirements or part of those requirements is to prevail and advise the relevant *WESM Participants* accordingly.

(a) Comply with safety procedures, the *emergency procedures* applicable to the *WESM Participant* in the circumstances, this chapter, and all *emergency directions* given by the *System Operator*; and

## 6.5.2 Intervention Due to Emergency

(b) Cooperate with the *Market Operator* and the *System Operator* to enable the *System Operator* to implement the *emergency procedures*.

6.5.2.1 If, in the best judgment of the *System Operator*, insufficient time exists for the *spot market* to address an *emergency*, the *System Operator* shall take any measures it considers to be reasonable and necessary to overcome the *emergency*, including without limitation:

6.5.1.5 Where there is conflict between these Rules and:

(a) The requirements of a *WESM Participant's* safety procedures;

(a) Increase the *generation* or *supply* capability such as requesting available but not committed *generating units* to start-up, or recall *transmission*

(b) The *emergency procedures* applicable to the *WESM Participant*

equipment outages;

- (b) Disconnect one or more connection points as considered by the System Operator to be necessary;
- (c) Direct, in accordance with clause 6.5.1, a Customer to take such steps as are reasonable to immediately reduce its load;
- (d) Constrain or constrain-off a Generation Company; and
- e) Require WESM Participants to do any reasonable act or thing which, the System Operator believes necessary in the circumstances.

Thereafter, the System Operator shall report in detail to the PEM Board in detail regarding the actions and circumstances under which the intervention was made.

## 6.6 SYSTEM SECURITY

### 6.6.1 System Security and Reliability Guidelines

6.6.1.1 In consultation with WESM Participants and

the Market Operator, the System Operator shall develop and periodically update system security and reliability guidelines, subject to approval of the PEM Board.

6.6.1.2 The system security and reliability guidelines developed under clause 6.6.1.1 shall be provided to:

- (a) The ERC and the DOE on completion and after any update thereon;
- (b) WESM Participants; and
- (c) Interested persons upon request.

6.6.1.3 If the System Operator proposes a change to the system security and reliability guidelines which, in the System Operator's reasonable opinion, is a material change then, prior to its implementation, that proposed change shall be reviewed in accordance with the Grid Code and Distribution Code.

6.6.2 Notice of Threat to System Security

6.6.2.1 Upon determination of the existence or the likely possibility of a threat to system security, the System



*Operator* shall without delay notify the *WESM Participants* and the *Market Operator* of such threat. Said notice shall include the details of that threat as well as:

- (a) The nature and general magnitude of the threat to *system security*, including an estimate of the likely duration thereof, and the likely shortfall in supply, likely to occur during that period;
- (b) The timeframe, in which, the *System Operator* will need to *intervene* in the *spot market* if the threat to *system security* does not subside without *intervention* by the *System Operator*; and
- (c) The regions of the *power system* in which the threat to *system security* is likely to be located.

6.6.2.2 If the *System Operator* provides the notice with details of a threat to system security to *WESM Participants*, in accordance with clause 6.6.2.1, the *System Operator* may issue instructions, requiring each *WESM*

*Participant* to provide best estimates of the following:

- (a) A *Scheduled Generation Company's plant* availability to either increase or decrease *generation*; and
- (b) A *Customer's* ability to either increase or decrease *market load*.

6.6.2.3 Despite clause 5.3, a *WESM Participant* shall not withhold information required by the *System Operator* in accordance with clause 6.6.2.2. The *WESM Participant* shall comply with the instructions and provide the information required as soon as practicable.

6.6.2.4 The *System Operator* shall treat all information provided to it by a *WESM Participant* under clause 6.6.2.2 as *confidential information* and may only use that information for the following purposes:

- (a) Maintaining or re-establishing *system security* by issuing *emergency directions* under clauses 6.6.4 and 6.6.5;

- (b) Making a decision under clause 6.6.3; and
    - (c) Regulatory reporting.
- 6.6.2.5 The *System Operator* shall inform *WESM Participants* and the *Market Operator* immediately when it reasonably considers a threat to *system security* to be at an end.
- 6.6.3 Response to System Security Threat
  - 6.6.3.1 If the *System Operator* has identified a threat to *system security* and reasonably considers that sufficient time exists for the threat to subside without *intervention*, the *System Operator* shall, in accordance with the procedures set out in clause 6.6.4, facilitate a *spot market* response to overcome the threat to *system security*.
  - 6.6.3.2 If the *System Operator* has identified a threat to *system security* and it does not believe that sufficient time exists for the threat to subside without *intervention* then the *System Operator* shall:
    - (a) Take any measures it believes to be reasonable and necessary to
      - maintain or restore *system security* including those set out in clause 6.6.5; and
    - (b) Act at all times in accordance with the *system security and reliability guidelines*.
- 6.6.4 Market Response to Threat to System Security
  - 6.6.4.1 If the *System Operator* believes that sufficient time exists for a threat to *system security* to subside without *intervention*, the *System Operator* shall:
    - (a) If it has not already done so, provide *WESM Participants* with the information set out under clause 6.6.2.1; and
    - (b) Advise the *Market Operator* and those *WESM Participants* who the *System Operator* considers would be required to take action or cease taking action if the threat to *system security* is not resolved without *intervention* of the following information:
      - (1) The existence of the threat

- to *system security*; and
- (2) The likely nature of any requirement of the *Grid Operator* if the *System Operator* determines that it should *intervene*.
- 6.6.4.2 The action or cessation of action required under clause 6.6.4.1(b) may include, but is not limited to, changes by the *Market Operator* to the *pre dispatch schedule* affecting *scheduled generating units, schedule network services* and/or *scheduled load*.
- 6.6.4.3 The *Market Operator* may:
- (a) Invite *Trading Participants* to revise or re-bid their physical capabilities submitted by such *Trading Participants* in accordance with clause 3.4 in respect of the relevant *trading interval*; and
- (b) Notify all *Trading Participants* of significant changes to the information provided under this clause 6.6.4.
- 6.6.4.4 *WESM Participants* shall comply with all requests and directions issued by the *Market Operator* under this clause 6.6.4.
- 6.6.5 Intervention Due to System Security Threat
- 6.6.5.1 If, in the best judgment of the *System Operator*, insufficient time exists for the *spot market* to address a threat to *system security*, the *System Operator* shall take any measures it considers to be reasonable and necessary to overcome the threat to *system security*, including without limitation:
- (a) Increase the *generation* or *supply* capability such as requesting available but not committed *generating units* to start-up, or recall *transmission equipment outages*;
- (b) *Disconnect* one or more *connection points* as considered by the *System Operator* to be necessary;
- (c) Direct, in accordance with clause 6.5.1, a *Customer* to take such steps as are reasonable to

immediately reduce its load;

(d) *Constrain-on* or *constrain-off* a *Generation Company*; and

(e) Require *WESM Participants* to do any reasonable act or thing, which the *System Operator* believes necessary in the circumstances.

6.6.5.2 Thereafter, the *System Operator* shall report in detail to the *PEM Board* in detail regarding the actions and circumstances under which the *intervention* was made.

## 6.7 FORCE MAJEURE

### 6.7.1 Force majeure event

A *force majeure* is the occurrence in a *trading interval* of an event or events not within the reasonable control, directly or indirectly, of the *Market Operator* and *WESM member*, to the extent that such event, despite the exercise of the reasonable diligence, cannot be or be caused to be prevented, or removed and has resulted in a reduction in the normal capacity of part or all of the *power transmission system* during that *trading interval* and such reduction is likely to materially affect the operation of the *spot market* or materially threaten *system security*.

### 6.7.2 Force majeure event

Events of *force majeure* shall include:

- (1) Major network trouble that caused partial or system-wide blackout;
- (2) Market system hardware or software failure that makes it impossible to receive or process market offer/bid information or dispatch the system in accordance with the *WESM Rules*; and
- (3) Any other event, circumstance or occurrence in nature of, or similar in effect to any of the foregoing.

### 6.7.3 Notification

6.7.3.1 The *WESM Participant* shall notify the *Market Operator* as soon as reasonably possible of the occurrence of any *force majeure* event.

6.7.3.2 The *Market Operator* shall notify all Trading Participants as soon as reasonably possible of the nature of the *force majeure* and the extent to which the *force majeure* affects the operation of the *spot market*.

### 6.7.4 Obligations of WESM Participants

*WESM Participants* shall use all reasonable endeavors to:

- (a) Ensure that they do not cause or exacerbate a *force majeure event*; and

- (b) Mitigate the occurrence and effects of a *force majeure event*.

## 6.8 MARKET SUSPENSION

### 6.8.1 Conditions for Suspension of the Market

6.8.1.1 Pursuant to Section 30 of the *Act*, the *ERC* shall suspend the operation of the *spot market* or declare a temporary *wholesale electricity spot market* failure in cases of:

- (a) Natural calamities; or
- (b) Following official declaration of a national and international security emergency by the President of the Republic.

### 6.8.2 Declaration of Market Suspension

6.8.2.1 The *spot market* can only be suspended by a declaration by the *ERC* under clause 6.8.1.1 and if the *spot market* is suspended:

- (a) The *ERC* shall notify the *Market Operator*; and
- (b) The *Market Operator* shall notify all *WESM Participants*, as soon as possible.

6.8.2.2 The *spot market* is deemed suspended at the start of the *trading interval* in which the *ERC* advises the *Market Operator* that the *spot market* is suspended.

6.8.2.3 Following a declaration by the *ERC* under clause 6.8.1.1, the *spot market* is to remain suspended until the *ERC* notifies the *Market Operator* that *spot market* operation is to resume.

6.8.2.4 The *Market Operator* shall promptly notify all *WESM Participants* that *spot market* operation is to resume and the time at which *spot market* operation is to resume.

6.8.2.5 Notwithstanding a suspension of the *spot market*, the *Market Operator* may issue *emergency directions* to *WESM Participants* in accordance with clause 6.5.1.

### 6.8.3 Effect of Market Suspension

6.8.3.1 The *market price* during a *trading interval* in which the *ERC* has declared the *spot market* to be suspended and up to the time that the market resumes in accordance with 6.8.2.4 is to be determined by the *Market Operator* in accordance with clause 6.2.3.

6.8.3.2 During a *trading interval* in which the *spot market* is suspended, the *WESM Rules* will continue to apply with such modifications as the *Market Operator* reasonably determines to be necessary, taking into consideration the circumstances and conditions giving rise to the decision by the *ERC* to suspend the *spot market*.

event or events which occurred;

(b) The appropriateness of actions taken by the *System Operator* and the *Market Operator* in relation to the event or events which occurred;

(c) The costs incurred by *WESM Members* as a consequence of responding to the event or events; and

#### 6.8.4 Intervention Report

6.8.4.1 Upon the concurrence of one or more of the following events:

(d) Any finding of potential, fault of any *WESM Participant* including a preliminary recommendation for further evaluation by the *PEM Auditor*.

- (a) An *intervention*;
- (b) An event which, in the *System Operator's* reasonable opinion, is or may be a threat to *system security*;
- (c) A *force majeure event*; or
- (d) An *emergency*,

6.8.4.2 A copy of the report prepared under clause 6.8.4.1 shall be provided to:

- (a) The *PEM Board*;
- (b) The *ERC* and the *DOE*; and
- (c) *WESM Participants* and interested persons on request.

The *PEM Board* shall, within ten days thereof, direct the *Market Surveillance Committee* to investigate the circumstances of that event and prepare a report to assess:

- (a) The adequacy of the relevant provisions of the *WESM Rules* in relation to the

#### 6.8.5 Market Suspension Report

6.8.5.1 Within ten *business days* following a declaration by the *ERC* under clause

6.8.1.1, the *Market Surveillance Committee* shall investigate the circumstances of that event and prepare a report to assess:

- (a) The adequacy of the provisions of the *WESM Rules* relevant to the event or events which occurred;
- (b) The appropriateness of actions taken by the *Market Operator* in relation to the event or events which occurred; and
- (c) The costs incurred by the *WESM Members* as a consequence of responding to the event or events.

6.8.5.2 A copy of the report prepared under clause 6.8.5.1 shall be provided to:

- (a) The *PEM Board*;
- (b) The *ERC* and the *DOE* on completion of the report; and
- (c) *WESM Participants* and interested persons on request.

## CHAPTER 7: ENFORCEMENT AND DISPUTES

### 7.1 SCOPE OF CHAPTER 7

In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of the transactions and operations of the *WESM*, this chapter sets out:

- (a) The responsibilities for ensuring that all *WESM Members* comply with the *WESM Rules*;
- (b) The procedures on how the alleged breaches will be dealt with including:
  - (1) The correct party to whom notice of an alleged breach of the *WESM Rules* by a *WESM Member* shall be given;
  - (2) The manner in which an alleged breach is to be investigated;
  - (3) The manner in which a breach is to be sanctioned; and
- (c) Other provisions on how disputes are to be resolved, including the appointment of a *Dispute Resolution Administrator* and *Dispute Resolution Panel*.

## 7.2 ENFORCEMENT

### 7.2.1 Compliance

The *PEM Board*, in consultation with the *Market Operator* and the *System Operator*, shall do all things reasonably necessary to ensure that all *WESM Members* comply with the *WESM Rules*.

### 7.2.2 Breaches of the *WESM Rules* by *WESM Participants*

7.2.2.1 If a *WESM Member* or the *Market Operator* has reasonable grounds to believe that another

*WESM Member* may have committed or may be committing a breach of the *WESM Rules*, the *WESM Member* or the *Market Operator* shall notify the *PEM Board* of the alleged breach in writing as soon as possible.

7.2.2.2 The *PEM Board* shall direct the *Disputes Resolution Administrator* to investigate the alleged breach as soon as possible, when:

(a) A *WESM Member* or the *Market Operator* notifies the *PEM Board* of an alleged breach of the *WESM Rules* in accordance with clause 7.2.2.1; or

(b) The *PEM Board* has a reasonable ground to believe that the *WESM Member* has committed or is committing an act probably in violation of the *WESM Rules*.

7.2.2.3 The *Disputes Resolution Administrator* shall issue a written notice to the *WESM Member* who is alleged to be in breach of the *WESM Rules* within five calendar *days* upon receipt of notice from the *PEM Board*.

7.2.2.4 The said notice issued by the *Disputes Resolution Administrator* shall:

(a) Specify the nature of the breach and the sanctions that may be imposed if the breach is not remedied;

(b) Require the *WESM Member* to explain in writing the alleged breach within ten (10) calendar days from receipt thereof; and

(c) Order the *WESM Member* who is in alleged breach to immediately remedy the act or omission comprising the alleged breach or some other remedial measure, if in the opinion of the *Dispute Resolution Administrator*, exercising due and necessary diligence, believes that some remedial or preventive measure should be taken to abate the effects of the act or omission complained of; *Provided that* (i) complying with the order shall not be deemed as an admission of guilt of the act or omission complained of,



and (ii) shall be recognized as a mitigating factor if the complying party is later determined to be in breach.

7.2.2.5 The notice shall be copy furnished to:

(a) The *PEM Board*;  
and

(b) The *ERC*,

Within five *business days* from issuance of notice.

7.2.2.6 The *Disputes Resolution Administrator* after according the parties due process shall determine whether the *WESM Member* in question is in breach of the *WESM Rules*.

7.2.2.7 If the *Disputes Resolution Administrator* determines that a *WESM Member* has indeed breached a *WESM Rule*, the *Disputes Resolution Administrator* shall require in writing the *WESM Member* to remedy the breach within a reasonable period of time; *Provided that*, the period to remedy, as determined by the *Disputes Resolution Administrator*, shall take in consideration all the attendant *c i r c u m s t a n c e s* surrounding the breach

including the nature and extent of damages or injuries caused as well as the quickest possible time required to correct the breach.

7.2.2.8 The *Disputes Resolution Administrator* may further recommend to the *PEM Board* that the *WESM Member* determined to be in breach be suspended in accordance with clause 3.15.7 if the said *Member* has:

(a) Committed such a breach of the *WESM Rules* and that the breach cannot be rectified;

(b) Continued to breach the *WESM Rules* over a period of time; or

(c) Failed to remedy a breach after it has been required to do so, the *Disputes Resolution Administrator* may recommend to the *PEM Board* for approval the suspension of the party in breach in accordance with clause 3.15.7.

7.2.2.9 If the breach is of such a nature that payment of compensation to affected parties is required, the *Market Operator* on behalf

- of the affected party may make a demand for payment under the *WESM Rules* without prejudice to the fines and penalties that the *ERC* may impose.
- 7.2.3 Alleged Breaches of the *WESM Rules* by the Market Operator or System Operator
- 7.2.3.1 If a *WESM Member* has reasonable grounds to believe that the *Market Operator* or *System Operator* is in breach of the *WESM Rules*, the *WESM Member* shall notify in writing the *PEM Board* of the breach.
- 7.2.3.2 If the *PEM Board* considers that the *Market Operator* or *System Operator* has committed a breach of the *WESM Rules*, the *PEM Board* shall direct the *Disputes Resolution Administrator* to investigate the alleged breach as soon as possible.
- 7.2.3.3 The *Disputes Resolution Administrator* shall issue a written notice to the *Market Operator* or the *System Operator* within five *business days* upon receipt of notice from the *PEM Board*.
- 7.2.3.4 The notice which the *Disputes Resolution Administrator* is required to issue under clause 7.2.3.3 shall:
- (a) Specify the nature of the breach and the sanctions which may be imposed if the breach is not remedied; and
- (b) Require the *Market Operator* or the *System Operator* to explain in writing the alleged breach within a reasonable period of time.
- 7.2.3.5 The notice issued under clause 7.2.3.3 shall be copy furnished to:
- (a) The *PEM Board*; and
- (b) The *ERC*.
- 7.2.3.6 If the breach is of such a nature that payment of compensation to affected parties is required, the *PEM Board* on behalf of the affected party may make a demand for payment from the *Market Operator* or the *System Operator* under the *WESM Rules* without prejudice to the fines and penalties that the *ERC* may impose.
- 7.2.3.7 If a breach by the *Market Operator* is not rectified within a reasonable time from the notice issued under clause 7.2.3.3 or is incapable of rectification, the *PEM Board* may file a formal complaint to the *ERC*.

## 7.2.4 Investigations

7.2.4.1 The *Disputes Resolution Administrator* may request from the *WESM Member* who is alleged to be in breach of the *WESM Rules* all information relating to the breach.

7.2.4.2 If the *Disputes Resolution Administrator* makes a request for information under clause 7.2.4.1, it shall provide to the *WESM Member* to whom the request is made the reasons for the request.

7.2.4.3 If a *WESM Member* fails to comply with a directive or request by the *Disputes Resolution Administrator* for information under clause 7.2.4.1, the *Disputes Resolution Administrator* may request the *Market Surveillance Committee* to investigate the matter and to prepare a report or such other documentation as the *Disputes Resolution Administrator* may determine.

7.2.4.4 A *WESM Member* shall cooperate with the *Market Surveillance Committee* to undertake the investigation and to prepare the report or other documentation under clause 7.2.4.3 and shall, at the

request of the *Market Surveillance Committee*, use its best endeavors to ensure that third parties make available such information as the person may reasonably be required for the purpose of the investigation.

7.2.4.5 In the event that an alleged breach exists, the participant in breach shall bear the cost of the investigation and preparation of the report or other documentation under clause 7.2.4.3.

7.2.4.6 Any report or other documentation referred to in this clause 7.2.4 may be used in any proceeding under or in relation to the *WESM Rules* or for the purpose of commencing any such proceeding.

7.2.4.7 All information provided under this clause 7.2.4 shall be treated in accordance with clause 5.3.

## 7.2.5 Sanctions

7.2.5.1 The *ERC* shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the *ERC* in the exercise of its powers, functions and responsibilities, and over all cases involving

disputes between and among participants or players in the energy sector.

7.2.5.2 In line with the principles stated in clause 7.1, the *PEM Board* may impose sanctions on any participant of the *WESM* for breach of any provision of the *WESM Rules*; *Provided that* this is without prejudice to the authority of *ERC* to impose fines and penalties pursuant to Section 46 of the *Act*.

#### 7.2.6 Actions by Agents, Employees or Officers of Participants

The act of omission of any partner, agent, officer, employee or any person acting for or in behalf of a *WESM Member* or the *Market Operator*, constituting a breach of the *WESM Rules*, shall be considered the act or omission of the *WESM Member*.

#### 7.2.7 Publication

Subject to clause 5.3, the *Dispute Resolution Administrator* shall *publish* a monthly report setting out a summary for the period covered by the report of all actions and rulings made during that period in relation to the enforcement of the *WESM Rules*.

### 7.3 DISPUTE RESOLUTION

#### 7.3.1 Application and Guiding Principles

7.3.1.1 The dispute resolution procedures set out in this clause 7.3 apply to

all disputes which may arise between any of the following:

- (a) The *Market Operator*;
- (b) The *System Operator*;
- (c) The *PEM Board* and its Working Groups except the Dispute Resolution Administrator;
- (d) *WESM Members*;
- (e) *Intending WESM Members*; and
- (f) Persons who have been notified by the *Market Operator* under clause 2.4.6.2 that an application for registration as a *WESM Member* has been unsuccessful, as to:
  - (g) The application or interpretation of the *WESM Rules*; or
  - (h) A dispute under or in relation to a contract between two or more persons or entities referred to in clauses 7.3.1.1 (a) to (f) where that contract provides that the dispute resolution procedures under the *WESM Rules* are to apply to

- any dispute under or in relation to that contract with respect to the application of the *WESM Rules*; or
- (i) A dispute under or in relation to the *Grid Code*, *Distribution Code* or other rules and regulations issued by the *ERC* and *DOE* under the *Act*, where such industry code or rules and regulations provide that the dispute resolution procedures under the *WESM Rules* are to apply to any dispute under or in relation to that industry code or rules and regulations; or
- (j) The failure of an entity or entities referred to in clauses 7.3.1.1 (a) to (e) to act or behave in a manner consistent with the *WESM Rules*; or
- (k) An obligation to settle payment under the *WESM Rules*; or
- (l) The failure of a person referred to in clause 7.3.1.1 (f) to become registered as a *WESM Member*
- under chapter 2.
- 7.3.1.2 For the avoidance of doubt, the dispute resolution procedures set out in this clause 7.3 apply to disputes between two or more entities from and within each of the categories set out in clauses 7.3.1.1(a) to (e) and (f) as appropriate.
- 7.3.1.3 Where a dispute of a kind set out in clause 7.3.1.1 arises, the parties concerned shall comply with the procedures set out in clauses 7.3.2 to 7.3.14 before pursuing any other dispute resolution mechanism, including but not limited to court action in relation to the dispute.
- 7.3.1.4 *WESM Members* shall comply with the dispute resolution process of the *WESM Rules* before filing a formal complaint to the *ERC*.
- 7.3.1.5 It is intended that the dispute resolution regime set out in, or implemented in compliance with, the *WESM Rules* and described in detail in clause 7.3 should to the extent possible:
- (a) Be guided by the objectives set out in clause 1.2.2;

- (b) Be simple, quick and inexpensive;
  - (c) Preserve or enhance the relationship between the parties to the dispute;
  - (d) Take account of the skills and knowledge that are required for the relevant dispute or issue;
  - (e) Observe the rules of law;
  - (f) Place emphasis on conflict avoidance; and
  - (g) Encourage resolution of disputes without formal legal representation or reliance on legal procedures.
- (b) Have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances;
  - (c) Have an understanding of the electricity industry;
  - (d) Has not been employed by any electric power industry participant, or a company or body related to or associated with a *WESM Participant* at least one year before appointment; and
  - (e) Agrees not to be employed by and does not accept employment with any electric power industry participant, or a company or body related to or associated with a *WESM Member* within one year after the person ceases to be a *Dispute Resolution Administrator*.

### 7.3.2 Appointment of Dispute Resolution Administrator and Panel Group

7.3.2.1 The *PEM Board* shall appoint a person to act as the *Dispute Resolution Administrator*.

7.3.2.2 The *Dispute Resolution Administrator* shall:

- (a) Have a detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation;

7.3.2.3 If the *Dispute Resolution Administrator* does not, in the reasonable opinion of the *PEM Board*, continue to meet

- the requirements of clause 7.3.2.2, the *PEM Board* may terminate the appointment of the *Dispute Resolution Administrator* and select a replacement *Dispute Resolution Administrator* who meets the requirements set out in clause 7.3.2.2.
- 7.3.2.4 The *Dispute Resolution Administrator*, shall select at least seven persons to constitute the *dispute resolution group* from which a *dispute resolution panel* can be selected in accordance with clause 7.3.5.1.
- 7.3.2.5 For the avoidance of doubt, the *dispute resolution group* selected under clause 7.3.2.4 may include any person the *Dispute Resolution Administrator* considers to be appropriately qualified in accordance with clause 7.3.2.7.
- 7.3.2.6 Each person appointed to the *dispute resolution group* under clause 7.3.2.4:
- (a) Is appointed for one year and is then eligible for reappointment;
  - (b) Is appointed on such other terms and conditions as the *Dispute Resolution Administrator* determines; and
- (c) Shall be approved by the *PEM Board*.
- 7.3.3 Dispute Management Systems
- All of the parties which are listed in clauses 7.3.1.1 (a) to (e) shall implement and adopt a *dispute management system* which is approved by the *PEM Board*.
- 7.3.4 Dispute Resolution Process
- 7.3.4.1 If a dispute arises to which the dispute resolution procedures under this clause 7.3 apply, the parties to the dispute shall act in good faith and use all reasonable endeavors to resolve the dispute through the procedures and alternative dispute mechanisms which are available to the parties through their *dispute management system*.
- 7.3.4.2 If the parties to the dispute are unable to resolve the dispute in accordance with clause 7.3.4.1, any party who is involved in the dispute can refer the dispute to the *Dispute Resolution Administrator* in accordance with clause 7.3.4.3.
- 7.3.4.3 If a party wishes to refer a dispute to the *Dispute Resolution Administrator* under clause 7.3.4.2, that party

shall notify in writing the *Dispute Resolution Administrator* and all of the other parties to the dispute of which the party is aware:

- (a) Of the existence of a dispute; and
- (b) Setting out a brief history of the dispute including:
  - (1) The names of the parties to the dispute;
  - (2) The grounds of the dispute; and
  - (3) The results of any previous dispute resolution processes undertaken pursuant to the *WESM Rules* in respect of the dispute; and
  - (4) The listing of all unresolved issues and detail description thereof.

7.3.4.4 If the *Dispute Resolution Administrator* receives a notice of a dispute under clause 7.3.4.3, the *Dispute Resolution Administrator* shall notify all other relevant parties of the dispute and shall request from

those other parties their own short written history of the dispute or any relevant associated written comments and if the *Dispute Resolution Administrator* requests such information from a party to the dispute, that information shall be provided by that party within ten *business days*.

7.3.4.5 If a matter has been referred to the *Dispute Resolution Administrator* under clause 7.3.4.2, then before taking any action to resolve the dispute, the *Dispute Resolution Administrator* shall determine whether it is reasonable that the dispute is one to which this clause 7.3 applies and shall advise the parties in writing of its decision.

7.3.4.6 If the *Dispute Resolution Administrator* is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the procedures set out in clause 7.3.4.7 do not apply to the dispute.

7.3.4.7 If the *Dispute Resolution Administrator* is reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the *Dispute Resolution Administrator* shall:



- (a) Appoint a *dispute resolution panel* in accordance with clause 7.3.5; and
- (b) Refer the dispute for resolution by the *dispute resolution panel* appointed under clause 7.3.5, within five *business days* of receiving any information from the parties to the dispute under clause 7.3.5.4.

three people chosen by the *Dispute Resolution Administrator* as appropriate in the particular circumstances of the dispute from the *dispute resolution group* selected by the *Dispute Resolution Administrator* under clause 7.3.2.4; and

7.3.4.8 Subject to all time limits specified in clause 7.3.5, nothing in this clause 7.3 precludes the *Dispute Resolution Administrator* from facilitating resolution of the dispute by agreement between the parties to the satisfaction of the parties without appointing or involving a *dispute resolution panel*.

- (b) Nominate one of the members of the *dispute resolution panel* to be the chairperson.

7.3.5.2 Replacement of a Dispute Resolution Panel Member

7.3.5.2.1 Each party to a dispute may petition to the *Dispute Resolution Administrator* for the removal of any one person appointed to the Dispute Resolution Panel stating the reasons why that person should be replaced. The *Dispute Resolution Administrator* may replace the person in question for

### 7.3.5 The Dispute Resolution Panel

7.3.5.1 Subject to clause 7.3.4.8, where the *Dispute Resolution Administrator* refers a dispute for resolution to a *dispute resolution panel* under clause 7.3.4.7, the *Dispute Resolution Administrator* shall:

- (a) Appoint a *dispute resolution panel* consisting of

valid reasons.

7.3.5.2.1 The replacement(s) shall come from the group established in clause 7.3.2.4.

7.3.5.3 A person who has previously served on a *dispute resolution panel* is not precluded from being appointed to another *dispute resolution panel* established in accordance with clause 7.3.5.1.

7.3.5.4 When a matter is referred to a *dispute resolution panel* under clause 7.3.4.7 (b), the *dispute resolution panel* shall select the form of, and procedures to apply to, the dispute resolution process which:

(a) The *dispute resolution panel* considers appropriate in the circumstances; and

(b) Shall:

(1) Be simple, quick and inexpensive;

(2) Take account of the skills and knowledge required for the relevant dispute;

(3) Observe the rules of law; and

(4) Encourage resolution of disputes without formal legal representation or reliance on legal procedures.

7.3.5.5 The dispute resolution process will take place at a venue determined by the *dispute resolution panel* in consultation with the parties and may include either party's premises or any other premises.

7.3.5.6 The parties shall comply with any procedural requirements imposed by the *dispute resolution panel* in the resolution of the dispute including a requirement to exchange submissions, documents and information.

7.3.5.7 The *dispute resolution panel* shall ensure that the dispute resolution process is completed and that the *dispute resolution panel* has given notice of its resolution of the dispute as soon as practicable but in any event within twenty *business days* of the dispute being referred to the *dispute resolution panel* (or

such longer period as the *Dispute Resolution Administrator* may permit following a request by the *dispute resolution panel* for an extension of time).

7.3.5.8 Within ten *business days* of receiving notification from the *dispute resolution panel* of its resolution of the dispute, the parties shall provide written notice to the *dispute resolution panel* describing all action taken in accordance with the resolution of the *dispute resolution panel*.

### 7.3.6 Disputes About Payment

If a dispute arises between a *WESM Member* and the *Market Operator* in respect of *final statements* or the supporting data provided with them in accordance with clause 3.14.5, then

- (a) The dispute shall be referred to the *Dispute Resolution Administrator* in accordance with clause 7.3.4.3 within twelve months of the dispute arising;
- (b) The *Dispute Resolution Administrator* shall notify all *WESM Members* who may be affected by the resolution of the dispute, including but not limited to *WESM Members* whose *final statement* may be amended as a consequence of the resolution of the dispute; and

- (c) Those payments shall be settled without prejudice on the date specified for payment in the relevant *final statement*, notwithstanding a dispute regarding the amount.

### 7.3.7 Disputes Affecting Final Statements

Where an amount stated to be payable in a *final statement* is the subject of a dispute and the resolution of the dispute affects the amount payable, then:

- (a) When the dispute is resolved in accordance with this clause 7.3, the *Market Operator* shall issue a revised *final statement* to replace each *final statement* affected by the resolution of the dispute, in accordance with clause 3.14.5; and
- (b) The amount specified as payable by a *WESM Member* in a revised *final statement* (if any) shall be paid by the relevant *WESM Member*, whether or not that *WESM Member* is a party to the dispute, on the date specified in the revised *final statement*.

### 7.3.8 Legal Representation

Legal representation before the *dispute resolution panel* may be permitted by the *dispute resolution panel* where the *dispute resolution panel* considers it appropriate or desirable.

### 7.3.9 Cost of Dispute Resolution

The reasonable costs of the parties to the dispute may be allocated by the *dispute resolution panel* for payment by one or more parties as part of its resolution.

### 7.3.10 Effect of Resolution

7.3.10.1 A resolution of the *dispute resolution panel* is binding on the parties to the dispute, including, without limitation, any provision of the resolution relating to the settlement of payment by any of the parties and any provision as to the performance of actions by any of the parties.

7.3.10.2 A requirement that a party to the dispute settle payment under:

(a) An agreement reached between the parties to a dispute under clause 7.3.4.1; or

(b) A resolution of the *dispute resolution panel*, is an obligation under the *WESM Rules* to settle payments.

7.3.10.3 If a resolution of the *dispute resolution panel* applies to a person referred to in clauses 7.3.1.1(a) to (e) that person shall comply with the resolution of the *dispute resolution panel* to the extent that the resolution

applies to that person, notwithstanding that the person was not a party to the dispute.

7.3.10.4 If a party to a dispute is not satisfied with the resolution of the dispute resolution panel, the party may file a formal complaint to the *ERC*.

### 7.3.11 Recording and Publication

7.3.11.1 When the *dispute resolution panel* resolves a dispute, the chairperson of the *dispute resolution panel* shall send written details of the resolution of the dispute to the *Dispute Resolution Administrator*, the *PEM Board*, the *ERC* and the *Market Operator* as soon as practicable.

7.3.11.2 Subject to clause 5.3, the details and results of each dispute which the *dispute resolution panel* resolves (including the reasons why the *Dispute Resolution Administrator* decided to appoint particular people to the *dispute resolution panel*) shall be *published* and made available to *WESM Members* as soon as practicable after the resolution of the dispute by the *dispute resolution panel*.

7.3.11.3 Claims for *confidentiality* of information disclosed

in the dispute resolution process shall be dealt with in accordance with the provisions relating to use of information in clause 5.3.

#### 7.3.12 Judicial Review

Following *ERC* resolution of the dispute, any case which involves question of fact may be appealable to the Court of Appeals and those which involves question of law may be directly appealable to the Supreme Court.

#### 7.3.13 Limitation of Liability

The *Dispute Resolution Administrator, dispute resolution panel* and its members are not to be liable for any loss or damage suffered or incurred by a *Participant* or any other person as a consequence of any act or omission of those persons unless the *Dispute Resolution Administrator, the dispute resolution panel*, or its members, as the case may be, acted with malice, manifest impartiality, bad faith, gross incompetence or gross negligence.

#### 7.3.14 Indemnity

Notwithstanding clause 7.3.13, except for liability arising out of conduct involving malice, manifest impartiality, bad faith, gross incompetence or gross negligence, if the *Dispute Resolution Administrator, the dispute resolution panel* or the members thereof is made liable to pay any amount for loss or damage suffered or incurred by a person referred to in clauses

7.3.1.1(a) to (f) or any other person as a consequence of any of its acts or omissions in performance of dispute resolution, the *PEM Board* shall indemnify said persons through an indemnification process to be developed by the *PEM Board*.

- (a) For the full amount adjudged; and
- (b) For costs and expenses incurred by that person in defending itself in the related proceedings.

### **CHAPTER 8: RULE CHANGE**

#### **8.1 SCOPE OF CHAPTER 8**

Upon the actual commercial operation of the *spot market*, changes, amendments, and modifications of the *WESM Rules* shall be undertaken in accordance with the provisions of this chapter.

This chapter 8 sets out:

- (a) The composition and manner of appointment of the *Rule Change Committee*;
- (b) The procedure for effecting a change to the *WESM Rules*; and
- (c) The procedure for approval of a change to the *WESM Rules*.

#### **8.2 RULE CHANGE COMMITTEE**

##### 8.2.1 Establishment of Rule Change Committee

The *PEM Board* shall establish a *Rule Change Committee* in consultation with industry participants.

## 8.2.2 Composition of Rule Change Committee

8.2.2.1 The *Rule Change Committee* shall be comprised in a manner that is consistent with the composition of the *PEM Board* except that the persons representing each of the sectors and other groups on the *Rule Change Committee* shall not be the same persons as those who are *Directors* on the *PEM Board*.

8.2.2.2 The principles applicable to the composition and operation of the *PEM Board* as set out in clause 1.4.2 apply also to the composition and operation of the *Rule Change Committee*.

8.2.3 Membership requirements – *PEM Board* each member of the *Rule Change Committee* shall:

- (a) Be appointed by the *PEM Board* in consultation with industry participants; and
- (b) Not be a member of the *PEM Board*.

## 8.2.4 Termination

The *PEM Board* may terminate the appointment of any person appointed to the *Rule Change Committee* at any time if:

- (a) The person becomes insolvent or under administration;

- (b) The person becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;

- (c) The person resigns or dies; or

- (d) The person fails to discharge the obligations of their office.

## 8.2.5 Appointment termination

If the *PEM Board* decides to terminate a person's appointment in accordance with clause 8.2.4, the *PEM Board* shall appoint another representative from the same membership category to fill that person's place on the *Rule Change Committee* within 20 *business days*.

## 8.2.6 Resignation

A person may resign from the *Rule Change Committee* by giving notice in writing to the *PEM Board*.

## 8.2.7 Conduct of meetings

The *Rule Change Committee* shall meet and regulate its meetings and conduct its business in a manner which does not conflict with the *WESM Rules*.

## 8.2.8 Advice and assistance

The *Rule Change Committee* may obtain such advice or other assistance as it thinks appropriate including, without limitation, advice or assistance from persons with experience relevant to any

change to the *WESM Rules* which the *Rule Change Committee* is considering and from *WESM Members* who are likely to be affected by any change.

*WESM Rules* will be to replace an existing provision of the *WESM Rules*;

### 8.3 REFERRAL OF MATTERS TO THE RULE CHANGE COMMITTEE

#### 8.3.1 Rule change proposals

The *Market Operator*, the *Government* or any *WESM Member* and other interested parties may submit proposals for changes to the *WESM Rules* to the *PEM Board*.

#### 8.3.2 Form of submission

Proposals for a change or changes to the *WESM Rules* shall:

- (a) Be in writing and addressed to the *PEM Board*;
- (b) Include the name and address of the applicant;
- (c) Demonstrate that the change to the *WESM Rules* is:
  - (1) Consistent with the *WESM* objectives;
  - (2) Feasible;
  - (3) Not unreasonably costly to implement; and
  - (4) A more appropriate or better means of achieving the criteria set out in clauses 8.3.2 (c) (1) to (c) (3), where the effect of the change to the

- (d) Include a brief statement of the reasons why a change to the *WESM Rules* is necessary or desirable; and

- (e) Contain sufficient information to permit a proper consideration by the *Rule Change Committee* of those reasons, including the public benefit (if any) of making the change to the *WESM Rules*.

#### 8.3.3 *PEM Board* obligations

The *PEM Board* shall:

- (a) Keep a register of all proposals for a change in the *WESM Rules* submitted to it; and
- (b) Give due course to the proposal within 5 *business days* from receipt thereof.

### 8.4 CONSIDERATION OF PROPOSED RULES CHANGE BY THE RULES CHANGE COMMITTEE

#### 8.4.1 Assessment of proposed Rule change

Within 10 business days from the referral from the *PEM Board*, the *Rules Change Committee* shall assess whether the proposed change to the *WESM Rules* is:

- (a) Consistent with the *WESM* objectives;
- (b) Feasible;

- (c) Not unreasonably costly to implement; and
  - (d) A more appropriate or better means of achieving the criteria set out in clauses 8.4.1 (a) to (c), where the effect of the change to the *WESM Rules* will be to replace an existing rule.
- its absolute discretion considers to be reasonable in all the circumstances for the purpose of delegating to that working group any obligation or task of the *Rules Change Committee* set out in clauses 8.4.2, 8.4.4 and 8.4.6, other than this clause 8.4.2 (d).

8.4.2 Discretions when assessment proposed Rule change

In considering whether a proposed rule change satisfies the criteria, which are set out in clause 8.4.1, the *Rules Change Committee* may:

- (a) Take into account any information and documents which the *Rules Change Committee* reasonably considers to be relevant to its consideration of the proposed change to the *WESM Rules*;
- (b) Consult with such persons as the *Rules Change Committee* reasonably considers will be likely to be affected by the proposed change to the *WESM Rules*;
- (c) Seek such information and views from any person in relation to the proposed change to the *WESM Rules* as may be practicable under the circumstances; and
- (d) Refer the proposed change to the *WESM Rules* to a working group comprising of persons having such expertise as the *Rules Change Committee* in

8.4.3 Notification following failure to satisfy criteria

If the *Rules Change Committee* concludes that a proposed change to the *WESM Rules* does not satisfy the criteria set out in clause 8.4.1, the *Rules Change Committee* shall notify the proponent and the *PEM Board* within 10 *business days* after receipt of proposal of its non-adoption of the proposal including the reason for its decision.

8.4.4 Notification following satisfying criteria

If the *Rules Change Committee* concludes that a proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1, the *Rules Change Committee* shall:

- (a) Notify the *PEM Board*, all *WESM Members* and all other interested parties of the proposed change to the *WESM Rules*; and
- (b) Invite such parties to make written submissions regarding the proposed change to the *WESM Rules* within the next 30 *business days* after receipt of proposed rule change.



8.4.5 Submissions regarding proposed Rule change

To be validly considered, a written submission made in response to a proposed change to the *WESM Rules* invited under clause 8.4.4 (b) must be received by the *Rules Change Committee* no later than 30 *business days* after the notice referred to in clause 8.4.4 (a) is given.

8.4.6 Consideration of submissions

The *Rules Change Committee* shall consider all valid submissions which it receives within 60 *business days* from the date the notification is given under clause 8.4.4(a).

8.4.7 Approval of proposed Rule change

If the *Rules Change Committee*, after having considered all valid submissions, concludes that it is necessary or desirable to give effect to the proposed change to the *WESM Rules*, the proposed change to the *WESM Rules* shall be submitted to the *PEM Board* for approval.

**8.5 CONSIDERATION OF PROPOSED RULES CHANGES BY THE PEM BOARD**

8.5.1 PEM Board assessment of proposed Rule change

If the *Rules Change Committee* submits a proposed change to the *WESM Rules* to the *PEM Board* for approval in accordance with clause 8.4.7, the *PEM Board* shall, within 10 *business days* from receipt thereof, assess whether:

- (a) The proposed change to the

*WESM Rules* satisfies the criteria which are set out in clause 8.4.1; and

- (b) The processes and procedures set out in clause 8.4 have been duly followed.

8.5.2 PEM Board discretions when assessing proposed Rule change

In considering whether a proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1, the *PEM Board* may:

- (a) Take into account any information and documents which the *PEM Board* reasonably considers to be relevant to its consideration of the proposed change to the *WESM Rules*;
- (b) Consult with such persons as the *PEM Board* reasonably considers will be likely to be affected by the proposed change to the *WESM Rules*; and
- (c) Seek such information and views from any person in relation to the proposed change to the *WESM Rules* as may be practicable in the circumstances.

8.5.3 Notification following unsuccessful proposal

8.5.3.1 If the *PEM Board* concludes that a proposed change to the *WESM Rules* does not satisfy the criteria set out in clause 8.4.1, the *PEM Board* shall notify:

- (a) The Rules Change Committee; out in clause 8.4 in the future.
- (b) Any parties who made written submissions to the *Rule Change Committee* under clause 8.4.4; and
- (c) The *DOE* and the *ERC*, within 10 *business days* of reaching that conclusion and shall provide reasons for its decision.

8.5.4 Submitting proposed Rule change for approval

If the *PEM Board* concludes that the proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1 and that the processes and procedures set out in clause 8.4 have been duly followed, the *PEM Board* shall submit the proposed change to the *WESM Rules* to the *DOE* for approval.

8.5.3.2 If the *PEM Board* determines that the processes and procedures set out in clause 8.4 have not been duly followed, the *PEM Board* shall:

- (a) Refer the proposed change to the *WESM Rules* back to the *Rules Change Committee* so that the procedural error can be rectified within the earliest possible time in accordance with clause 8.4; and
- (b) Take such steps as it considers reasonably necessary and appropriate in all the circumstances to ensure that the *Rules Change Committee* adheres to the processes and procedures set

**8.6 APPROVAL OF PROPOSED RULES CHANGES**

8.6.1 DOE assessment of proposed Rule change

If the *PEM Board* submits a proposed change to the *WESM Rules* to the *DOE*, for approval in accordance with clause 8.4.4, the *DOE* shall assess whether the proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1.

8.6.2 DOE discretions when assessing proposed Rule change

In considering whether a proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1, the *DOE*, may:

- (a) Take into account any information and documents which the *DOE*, reasonably considers to be relevant to its consideration of the proposed change to the *WESM Rules*;

(b) Consult with such persons as the *DOE*, reasonably considers will be likely to be affected by the proposed change to the *WESM Rules*; and

*WESM Rules* will take effect when the change to the *WESM Rules* is published, or on such later date as the *DOE*, determines.

(c) Seek such information and views from any person in relation to the proposed change to the *WESM Rules* as may be practicable in the circumstances.

8.6.4.2 The *PEM Board* shall develop a classification system of rule change proposals that will delineate proposals requiring *DOE* review and approval vis-à-vis proposals that can be acted upon at the *PEM Board* level. This classification shall be approved by the *DOE*.

### 8.6.3 Notification following failure to satisfy criteria

If the *DOE* concludes that a proposed change to the *WESM Rules* does not satisfy the criteria which are set out in clause 8.4.1, the *DOE*, shall notify:

### 8.6.5 Report by the Rules Change Committee

- (a) The *PEM Board*;
- (b) The person who proposed the change to the *WESM Rules*; and
- (c) Any party who made written submissions to the *Rules Change Committee* under clause 8.4.4 within 10 *business days* of reaching that conclusion and shall provide reasons for its decision.

The *Rules Change Committee* and the *PEM Board* shall develop and make available to *WESM Members* a periodic report, which sets out:

### 8.6.4 Approval of proposed Rule change

8.6.4.1 If the *DOE* concludes that a proposed change to the *WESM Rules* is consistent with the Act and the public interest and satisfies the criteria which are set out in clause 8.4.1, the proposed change to the

- (a) All *WESM Rule* change proposals which have been made in the previous six month period;
- (b) The progress of those *WESM Rule* change proposals in accordance with the procedures prescribed in this chapter 8;
- (c) The reason for any delays in relation to the progress of those *WESM Rule* change proposals and any action the *Rules Change Committee*, the *PEM Board* or the *DOE* has taken to overcome those delays; and

- (d) Any other matter which the *Rules Change Committee*, the *PEM Board* or the *DOE* reasonably considers to be relevant to the progress of *WESM Rule* change proposals, including but not limited to any policies developed by the *Rules Change Committee*, the *PEM Board* or the *DOE* in relation to:

- (1) The way in which it intends to deal with any procedure specified in this chapter 8; and
- (2) The facts, matters or circumstances which the *Rule Change Committee*, the *PEM Board* or the *DOE* may take into account in making a decision and otherwise discharging its functions and obligations under this chapter 8,

provided that nothing in this clause 8.6.5 is to be taken to limit the exercise by the *Rules Change Committee*, the *PEM Board* or the *DOE*, as the case may be, of its discretion under this chapter 8.

## 8.7 RULES CHANGE COMMITTEE INDEMNITY

The *Rules Change Committee* and its members, and any working group to whom any task or obligation is delegated under clause 8.4, are not to be personally liable in any way for any change, which is made to the *WESM Rules*.

## CHAPTER 9 INTERPRETATION

### 9.1 GENERAL

In the *WESM Rules*, unless the context otherwise requires:

- (a) Headings are for convenience only and do not affect the interpretation of the *WESM Rules*;
- (b) Words importing the singular include the plural and vice versa;
- (c) Words importing a gender include any gender;
- (d) Where italicized, a word or phrase has the definition given to that word or phrase in chapter 10;
- (e) Other parts of speech and grammatical forms of a word or phrase defined in the *WESM Rules* have a corresponding meaning;
- (f) An expression importing a natural person includes any legal entity, company, partnership, joint venture, association, corporation or other body corporate and any *government authority*;
- (g) A reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (h) A reference to a clause, paragraph, part, annexure, exhibit or schedule is a reference to a clause and paragraph and part of, and an annexure, exhibit and schedule to the *WESM Rules* and a reference to the *WESM Rules* includes any annexure, exhibit and schedule;
- (i) A reference to a statute, regulation, proclamation, order in council,

ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, and by-laws issued under that statute;

- (j) A reference to the *WESM Rules* or to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, the *WESM Rules* or that document or that provision of that document;
- (k) A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assignees;
- (l) A reference to a body other than a *WESM Member* or the *Market Operator* (including, without limitation, an institute, association or authority), whether statutory or not:
  - (1) Which ceases to exist; or
  - (2) Whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (m) A reference in the context of any provision of the *WESM Rules* to a "representative" of any person is a reference to any director, officer or employee of that person or any agent, consultant or contractor appointed or engaged by that person for purposes connected with the subject matter of the relevant

provision of the *WESM Rules*.

## 9.2 TIME AND DATES

9.2.1.1 Unless the context otherwise requires, a reference in the *WESM Rules*:

- (a) To a calendar day (such as 1 January) or a day of the week (such as Sunday) is to the day which begins at 00:00 hours on that day;
- (b) To a week is to the period from 00:00 hours on a day until 00:00 hours on the seventh day following;
- (c) To a month (or a number of months) or a calendar month is to the period from 00:00 hours on a day in one month until 00:00 hours on the same day of the month which follows (or follows by the relevant number of months), or if there is no such day in that month, 00:00 hours on the first day of the next following month;
- (d) To a year is to the period from 00:00 hours on a day in one year until 00:00 hours on the same day (or where the day in the first year was 29 February, on 1 March) in the following year, and a reference to a calendar year (such as 1997) is to be construed accordingly; and
- (e) To times of the day are to *Philippines standard time*.

9.2.1.2 Unless the context otherwise requires, a period of time:

- (a) Which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
- (b) Which commences on a given day or the day of an act or event is to be calculated inclusive of that day.

9.2.1.3 Where under any provision of the *WESM Rules* a person is required to provide any information by a certain date or time, the relevant provision is to be taken to include a requirement that that the relevant information shall be given as soon as possible and no later than the date or time given.

### 9.3 ASSIGNMENT

Unless otherwise expressly permitted by the *WESM Rules*, a *WESM Member* shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under the *WESM Rules*.

### 9.4 WAIVER

A person does not waive its rights, powers and discretions under the *WESM Rules* by:

- (a) Failing to exercise its rights;
- (b) Only exercising part of its rights; or
- (c) Delaying the exercise of its rights.

### 9.5 PAYMENT

#### 9.5.1 Method of payment

Unless otherwise provided in the *WESM Rules*, any payment to be made under the *WESM Rules* shall be made either by the *EFT facility* or in cash or by a draft or check drawn by a bank as defined

in legislation applicable to the conduct of banking activities in the Philippines.

#### 9.5.2 Interest rates

Unless the context otherwise requires, a reference in the *WESM Rules* to an *interest rate* published in respect of a specified day shall, if that *interest rate* is not published, authorized or otherwise available in respect of that day, be taken to be the relevant *interest rate* published immediately prior to that day; and if that *interest rate* is suspended, modified, discontinued, or its method of calculation substantially alters or if the relevant publication ceases to publish that *interest rate* for more than seven consecutive days, the *Market Operator* shall provide a substitute rate of interest that in the *Market Operator's* reasonable opinion is the nearest equivalent to the *interest rate* and that substitute rate of interest shall be taken to be the applicable *interest rate*.

### 9.6 NOTICES

#### 9.6.1 Properly giving notices

A notice is properly given under the *WESM Rules* to a person if:

- (a) It is personally served;
- (b) A letter containing the notice is sent by registered mail to the person at an address (if any) supplied by the person to the sender for service of notices or, where the person is a *WESM Member*, an address shown for that person in the register of

*WESM Members* maintained by the *Market Operator*, or, where the addressee is the *Market Operator*, the registered office of the *Market Operator*;

- (c) It is sent to the person by facsimile or electronic mail to a number or reference which corresponds with the address referred to in clause 9.6.1(b) or which is supplied by the person to the *Market Operator* for service of notices and, if sent by electronic mail, the person sending the notice also sends a copy of the notice by letter or facsimile to the person on the same day; or
- (d) The person actually receives the notice by any other means.

#### 9.6.2 Notices treated as being given

A notice is treated as being given to a person by the sender:

- (a) Where sent by registered mail to an address in the central business district of a region in the Philippines, on the second *business day* after the day on which it is posted;
- (b) Where sent by post in accordance with clause 9.6.1(b) to any other address, on the third *business day* after the day on which it is posted;
- (c) Where sent by facsimile in accordance with clause

9.6.1(c) and a complete and correct transmission report is received:

- (1) Where the notice is of the type in relation to which the addressee is obliged under the *WESM Rules* to monitor the receipt by facsimile outside of, as well as during, business hours, on the day of transmission; and
- (2) In all other cases, on the day of transmission if a *business day* or, if the transmission is on a day which is not a *business day* or is after 4.00 pm (addressee's time), at 9.00 am on the following *business day*;

- (d) Where sent by electronic mail in accordance with clause 9.6.1(c):

- (1) Where the notice is of a type in relation to which the addressee is obliged under the *WESM Rules* to monitor receipt by electronic mail outside of, as well as during, business hours, on the day when the notice is recorded as having been first received at the electronic mail destination; and
- (2) In all other cases, on

the day when the notice is recorded as having been first received at the electronic mail destination, if a *business day* or if that time is after 4.00 pm (addressee's time), or the day is not a *business day*, at 9.00 am on the following *business day*; or

- (e) In any other case, when the person actually receives the notice.

#### 9.6.3 Form of notice

Any notice to or by a person under the *WESM Rules*:

- (a) Shall be in legible writing and in English; and
- (b) Where the sender is a company, shall be signed by a responsible employee or officer thereof or under the corporate or official seal of the sender (except where the notice is sent by electronic mail).

#### 9.6.4 Calculating a specified period for notices

Where a specified period (including, without limitation, a particular number of days) is provided, for purposes of calculating the number of days indicated in the period, the first day shall be excluded while the last day is included in said computation.

#### 9.6.5 General

In this clause 9.6, a reference to:

- (a) An addressee includes a reference to an addressee's officers, agents, or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee; and
- (b) A notice includes any request, demand, consent or approval or other communication to or by a person under the *WESM Rules*.

### 9.7 RETENTION OF RECORDS AND DOCUMENTS

Unless otherwise specified in the *WESM Rules*, all records and documents prepared for or in connection with the *WESM Rules* shall be retained for a period of at least seven years.

### 9.8 SEVERABILITY

Each part or all of a provision of the *WESM Rules*:

- (a) Will be construed so as to be valid and enforceable to the greatest extent possible; and
- (b) May be so construed (or deleted if necessary) regardless of the effect which that may have on the provision in question or any other provision or the *WESM Rules* as a whole.

## CHAPTER 10 TRANSITORY PROVISIONS

### 10.1 PURPOSE AND SCOPE

#### 10.1.1 Purpose



To provide guidelines for the transition of the electric power industry from the existing structure to the new structure as specified in the Act;

#### 10.1.2 Scope of Application

This Chapter applies to the following:

- (a) *Market Operator*;
- (b) *System Operator*;
- (c) *Generation Companies*;
- (d) *Ancillary Services Provider*;
- (e) *Distribution Utilities*;
- (f) *Suppliers*;
- (g) *Metering Services Providers*;
- (h) *Bulk Users/End-users*; and
- (i) Other similar entities authorized by the *ERC* to become members of the *WESM*.

### 10.2 MARKET TRANSITION

#### 10.2.1 Establishment of the Wholesale Electricity Spot Market

10.2.1.1 Within one (1) year from the effectivity of the *Act*, the *DOE* shall establish a *WESM* composed of the *WESM participants*. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

10.2.1.2 The *DOE* shall constitute the *Autonomous Group Market Operator* ("*AGMO*"), initially under the administrative

supervision of the *TRANSCO*.

#### 10.2.2 The Market Operator

10.2.2.1 The *WESM* shall be primarily operated by a *Market Operator* subject to the overall supervision of the *PEM Board* and in accordance with the *WESM Rules*.

10.2.2.2 The *AGMO* shall undertake the preparatory work, and initial operation of the *WESM* for a period of twelve months from the *spot market commencement date* and, for the avoidance of doubt, during that initial twelve-month period, all references in the *WESM Rules* to "*Market Operator*" shall be construed to mean "*AGMO*".

10.2.2.3 Not later than one (1) year after the implementation of the *WESM*, an *Independent Market Operator* ("*IMO*") shall be formed and the functions, assets and liabilities of the *AGMO* shall be transferred to such entity with the joint endorsement of the *DOE* and the electric power industry participants. Thereafter, the administrative supervision of the *TRANSCO* over such entity shall cease.

### 10.2.3 The Governing Board

10.2.3.1 The *WESM* shall be governed, and its powers and functions exercised by a governing body with equitable representation from *electric power industry participants*. The representatives of the AGMO governing body shall be selected, in accordance with the *WESM Rules*. The *DOE* Secretary shall chair the *AGMO governing board*.

10.2.3.2 The *AGMO governing board* shall govern the operation of the AGMO until the formation or selection of an *IMO*. Until such time, all references in the *WESM Rules* to "*PEM Board*" shall be construed to mean "*AGMO governing board*".

### 10.2.4 Membership to the WESM

10.2.4.1 Subject to compliance with the membership criteria, all *Generating Companies, Distribution Utilities, Suppliers, Bulk consumers/End-users and Other Similar Entities authorized by the ERC* shall be eligible to become members of the *WESM*. The *ERC* may authorize other similar entities to become eligible as members, either directly or indirectly, of the *WESM*.

10.2.4.2 A *Generation Company* shall comply with the membership criteria as prescribed under the *WESM Rules* as set forth in Rule 9 of the *IRR* of the Act on *WESM*.

10.2.4.3 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 *System Operator* to facilitate central dispatch by the *System Operator*.

10.2.4.4 For the first five (5) years from the establishment of the *WESM*, *Distribution Utilities* shall source at least ten percent (10%) of its total demand from the *spot market*. For this purpose, each *Distribution Utility* may submit a *demand bid* corresponding to a *load* which has been certified as *dispatchable* in accordance with the *Grid Code* and *Distribution Code*.

10.2.4.5 NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the WESM by any *Electric Cooperative* or small *Distribution Utility* to support their credit standing consistent with the provision hereof.

### 10.2.5 Price Determination Methodology

The *price determination methodology* contained in the *WESM Rules* shall be subject to the approval of *ERC*.

## 10.3 PROVISIONS FOR THE INTERIM WESM

The following provisions shall be applicable during the operation of the *interim WESM*.

### 10.3.1 Spot Market Trading

10.3.1.1 Initially, only energy shall be traded upon commencement of the *interim WESM*.

10.3.1.2 The composition of the *market network model* may be limited in scope during the operation of the *interim WESM*.

### 10.3.2 Ancillary Services

10.3.2.1 The *System Operator* shall arrange for the provision of adequate *ancillary services* for each region either:

- (a) By competitive tendering process, administered by the

*Market Operator*, whereby a number of *Ancillary Services Providers* can provide a particular category of *ancillary services*; or

- (b) By negotiating contracts directly with an *Ancillary Services Provider* who is a *Direct WESM Member*, where only one *Ancillary Services Provider* can provide the required *ancillary services*; or

- (c) Where applicable, by competitive *spot market* trading in accordance with clause 3.3.4.

10.3.2.2 The reserve trading amount shall be based on the cost of *reserves* contracted for by the *System Operator*.

10.3.2.3 When applicable and reasonably feasible, the *Market Operator* shall establish a *spot market* mechanism for competitive spot market trading in the purchase of certain *reserve categories*. The *DOE* shall declare the commencement of the *spot market* for *ancillary services*.

10.3.3 Market Dispatch Optimization Model

The interim *market dispatch model* is of lesser scope than the final market optimization model and determines dispatch targets for the end of a trading interval, reserve allocations for the trading interval, associated energy prices at all trading nodes in the power system, and reserve prices for all reserve regions.

*installation* in accordance with Appendix B2 within ten (10) business days of entering into an agreement with the *TRANSCO* under clause 4.3.4 (b).

### 10.3.4 Metering

10.3.4.1 The installation and maintenance of *metering installations* shall initially be carried out by the *TRANSCO*.

10.3.4.2 A *Trading Participant* who is a direct *WESM member* shall:

(a) Arrange with the *TRANSCO* for the provision, installation and maintenance of each *metering installation* for which that *Trading Participant* is financially responsible;

(b) Enter into an agreement with the *TRANSCO* for the provision, installation and maintenance of the relevant *metering installation* by the *TRANSCO*; and

(c) Provide the *Market Operator* with the relevant details of the *metering*

### 10.3.4.3 Metering Installation Components

The following requirements may be relaxed during the operation of the *interim WESM*:

(a) Facilities to enable *metering data* to be transmitted from the *metering installation* to the *metering database*, and be capable of communication with the *metering database*; and

(b) A *dequate* communication facility that will enable the *Market Operator* to obtain remote access to the *metering data* from, the *metering database*.

## 10.4 ACTIONS TO BE TAKEN PRIOR TO SPOT MARKET COMMENCEMENT DATE

### 10.4.1 Significant Variations

The *Market Operator* shall, in consultation with *WESM Participants*, develop guidelines as to what constitutes a *significant*

*variation* in and between *trading intervals* subject to the approval of the *PEM Board*.

#### 10.4.2 Market Operator Performance

10.4.2.1 Prior to the *spot market commencement date*, the *Market Operator* shall develop performance indicators which provide an indication of, and monitor, the *Market Operator's* performance under the *WESM Rules* in respect of:

- (a) The *Market Operator's* responsibilities under the *WESM Rules*; and
- (b) The achievement of the *WESM* objectives as defined in clause 1.2.5.

10.4.2.2 The performance indicators developed under clause 10.4.2.1 shall be approved by the *PEM Board*.

#### 10.4.3 Formulation of PEM Board By-law

Prior to the *spot market commencement date* and, if applicable, subject always to any relevant law or regulation of the Philippines in relation to processes and procedures of corporate entities or the formulation of corporate constitutions, the *DOE* shall formulate the by-law of the *PEM Board* which shall set out, among others, the following:

- (a) Conduct of meetings, including but not limited to the frequency of meetings, the quorum required to conduct a meeting, the manner in which a meeting may be conducted and the location of meetings;
- (b) Appointments on the *PEM Board*;
- (c) Tenure of *Directors* appointed to the *PEM Board*;
- (d) Allowance, if any, to be made to *Directors* appointed to the *PEM Board*;
- (e) Disclosure of information by and between *Directors* appointed to the *PEM Board*;
- (f) Detailed procedures for voting;
- (g) Formulation of a budget for the *PEM Board*;
- (h) Appointment of a Chief Executive Officer or General Manager to conduct the daily business of the *PEM Board*, if necessary and appropriate;
- (i) Procedure to be followed by the *PEM Board* for amending its own by-law; and
- (j) Any other matter considered relevant by the *DOE*.

#### 10.4.4 Determination of Market Network Model

10.4.4.1 Prior to the *spot market commencement date*,

the *Market Operator*, in consultation with *WESM Participants* and the *System Operator* shall:

- (a) In accordance with clauses 3.2.1.2 and 3.2.1.3, recommend the composition of the *market network model*;
- (b) Seek approval of the *market network model* from the *PEM Board*; and
- (c) *Publish* details of the *market network model*, once approved.

#### 10.4.5 Determination of Market Trading Nodes

10.4.5.1 Prior to the *spot market commencement date*, the *Market Operator* shall, in accordance with clauses 3.2.2.1, 3.2.2.2 and 3.2.2.3, determine the identity of each *market trading node* for trading and *settlement* purposes.

10.4.5.2 Prior to the *spot market commencement date*, the *Market Operator* shall publish a register of *market trading nodes* and of the *Trading Participant* responsible for each.

#### 10.4.6 Determination of Customer Pricing Zones

10.4.6.1 Prior to the *spot market commencement date*, the *Market Operator* shall:

- (a) Partition the set of *customer nodes* into pricing zones for *Customers*, to be called *customer pricing zones*;
- (b) Determine formula to calculate *ex ante zonal energy prices* and *ex post zonal energy prices* as the appropriate *load-weighted averages of nodal energy prices* for *nodes* within each *customer pricing zone*;
- (c) Determine the nature of information to be published for each *customer pricing zone*;
- (d) Submit to the *PEM Board* for approval relevant details of all *customer pricing zones*, allocation of *market trading nodes* to each *customer pricing zone* and price calculation formula; and
- (e) After obtaining the approval of the *PEM Board* under clause 10.4.6.1 (d) *publish* the following:

- (1) *C u s t o m e r pricing zones;* and
- (2) Allocation of *market trading nodes.*

10.4.6.2 The *PEM Board* shall develop and thereafter shall *publish* guidelines regarding:

- (a) The allocation of market trading nodes to customer pricing zones; and
- (b) Any other matter relevant to pricing zones.

#### 10.4.7 Ancillary Services

##### 10.4.7.1 Ancillary Services Agreements

10.4.7.1.1 The *System Operator* shall, prior to the *spot market commencement date* and in consultation with the *Market Operator*, develop and *publish* procedures in relation to any competitive tendering process for *ancillary services*, or any other procedure which the *System Operator* plans to develop for the provision of *ancillary services*.

10.4.7.1.2 P r i o r to the *spot market commencement date*, the *System Operator* shall:

- (a) In consultation with the *Market Operator* and *WESM Participants*, develop:

(1) *Ancillary service arrangements* and *interim market contract requirements;*

(2) *Ancillary service categories* including *reserve categories;*

(3) *Reserve facility categories;*

(4) *Reserve effectiveness factors;*

(5) *Reserve regions;*

(6) *Reserve cost recovery zones;* and

(7) *Ancillary service cost recovery formula* to be developed in accordance with the principles set out in clause 3.3.5.4;

(8) Allocation of *market trading nodes* to *reserve cost recovery zones;* and

(9) *Reserve cost recovery formula.*

- (b) Submit to the *PEM Board* to endorse to the *ERC* for approval

relevant details of each of the matters set out in clause 10.4.7.1.2(a); and

- (c) After obtaining the approval of the ERC under clause 10.4.7.1.2 (b) *publish* the following:

(1) *Ancillary service arrangements and ancillary service categories including reserve categories,*

(2) *Reserve cost recovery zones;*

#### 10.4.7.2 Reserve Market Arrangements

10.4.7.2.1 When reasonably feasible, the *Market Operator*, in consultation with the *System Operator*, shall establish a market for the purchase of certain *reserve categories*.

10.4.7.2.2 The *System Operator* shall define:

- (a) *Reserve categories;*
- (b) *General requirements relating to each reserve category; and*
- (c) The criteria to be satisfied by various *reserve facility categories* offering *reserve*

to meet those requirements, in accordance with the *Grid Code* and *Distribution Code*.

#### 10.4.7.3 The *System Operator*, in consultation with the *Market Operator*, shall:

(a) *Establish locationally specific requirements for each reserve category;*

(b) *Specify reserve effectiveness factors for each reserve facility category;*

(c) *Establish reserve regions within which reserve offers may be accepted to meet each such locationally specific requirement;*

(d) *Determine a corresponding set of locationally specific reserve requirements constraints to be incorporated into the dispatch optimization; and*

(e) *Establish reserve cost recovery zones within which reserve cost recovery charges may be recovered to meet each locationally specific requirement.*



10.4.7.4 The *Market Operator* shall:

- (a) Declare the form in which *reserve offers* for each *reserve category* will be accepted from various *reserve facility categories*; and
- (b) Determine the frequency with which, and a process by which, *reserve offers* may be updated.

#### 10.4.8 Timetable

10.4.8.1 Prior to the *spot market commencement date*, the *Market Operator*, in consultation with the *System Operator* and *WESM Participants*, shall develop a *timetable* for operation of the *spot market*.

10.4.8.2 The *Market Operator* shall publish the *timetable* subject to the approval of the *PEM Board*.

#### 10.4.9 Load Forecasting

Prior to the *spot market commencement date*, the *Market Operator* shall, in consultation with the *System Operator* and with the approval of the *PEM Board*, develop procedures for preparation of *net load forecasts* as required by clause 3.5.4.

#### 10.4.10 Market Dispatch Optimization Model

10.4.10.1 Prior to the *spot market commencement date*, the *Market Operator* shall develop the formulation of the *market dispatch optimization model* to be used for the purposes of *central scheduling and dispatch*, and pricing in accordance with clauses 3.8 and 3.10.

10.4.10.2 Prior to the *spot market commencement date*, the *Market Operator* shall develop performance standards, including standards for reliability and processing time, which shall be met by the *market dispatch optimization model*, once implemented.

10.4.10.3 The formulation of the *market dispatch optimization model* developed under clause 10.4.10.1 and the performance standards developed under clause 10.4.10.2 are to be approved by the *PEM Board*, having been certified as compliant with the *WESM Rules* by an independent reviewer appointed by the *PEM Board*.

10.4.10.4 The *Market Operator* shall publish details of

the *market dispatch optimization model* once approved by the *PEM Board* under clause 10.4.10.4.

characteristics, local *network* conditions and any other matter considered relevant for purposes of scheduling and dispatch, and in accordance with the *Grid Code and Distribution Code*

#### 10.4.11 Constraint Violation Coefficients

10.4.11.1 Prior to the *spot market commencement date*, the *Market Operator* shall develop and *publish constraint violation coefficients* or procedures for calculating *constraint violation coefficients* for each *constraint* detailed in clause 3.6.1.4, to be used in the *market dispatch optimization model*.

10.4.11.2 The *constraint violation coefficients* shall be:

- (a) Developed in consultation with *WESM Participants*;
- (b) Appropriate for and commensurate with the particular *constraint* to which it is to be applied; and
- (c) Approved by the *PEM Board*.

#### 10.4.12 Dispatch Tolerances

Prior to the *spot market commencement date*, the *Market Operator* shall, subject to *PEM Board* approval, develop guidelines on *dispatch tolerances* for each type of plant, and location, taking into account *plant*

#### 10.4.13 Management Procedures During Load Shedding

Prior to the *spot market commencement date*, the *System Operator* and the *Market Operator*, in consultation with *WESM Participants*, and subject to approval by the *PEM Board*, shall develop and *publish* detailed procedures for the management of all aspects of *dispatch* and *pricing* during periods when *load shedding* is required under clause 3.9.7.

#### 10.4.14 Management Procedures for Excess Generation

Prior to the *spot market commencement date*, the *System Operator* and the *Market Operator*, in consultation with *WESM Participants*, and subject to approval by the *PEM Board*, shall each develop and *publish* the procedures which they plan to adopt with respect to the management of all aspects of *dispatch* and pricing should it be necessary to shut down *generating systems* under clause 3.9.8.1.

#### 10.4.15 Management Procedures for Excess Generation

Prior to the *spot market commencement date*, the *System Operator* and the *Market Operator*, in consultation with *WESM Participants*, and subject

to approval by the *PEM Board*, shall each develop and *publish* the procedures which they plan to adopt with respect to the management of all aspects of *dispatch* and pricing should it be necessary to shut down *generating systems* in the event the *dispatch optimization*, or any *market projection*, indicate *excess generation* at any *node*.

#### 10.4.16 Procedures for Ex-Post Nodal Energy Price

Prior to the *spot market commencement date*, the *Market Operator*, in consultation with *WESM Participants*, and subject to approval by the *PEM Board*, shall develop and *publish* the procedures to be employed in clauses 3.10.6 (d) and (e) in establishing the *network* configuration and other *constraints* to be assumed for the determination of *ex-post nodal energy prices* for circumstances in which *power system* conditions materially change during the *trading interval*, with a view to ensuring that:

- (a) Consistency is maintained between the *market network* configuration and state determined in accordance with clause 3.10.6 (d), any *constraints* determined in accordance with clause 3.10.6 (e) and the *unrestrained net loads* measured or estimated for each *market network node* in accordance with clause 3.10.6 (c); and
- (b) The *ex-post* prices produced in accordance with clause

3.10.6, properly and fairly represent average conditions over the *trading interval*.

#### 10.4.17 Emergency Procedures

The *System Operator*, in consultation with the *Market Operator* shall develop appropriate emergency procedures in accordance with the *Grid Code* and *Distribution Code*. Such procedures shall be subject to approval of the *PEM Board*.

#### 10.4.18 Harmonization

Harmonization of *WESM Rules* with the *Grid Code*, *Distribution Code* and other rules and regulations issued by the *DOE* and *ERC* shall be undertaken upon promulgation of these Rules.

#### 10.4.19 The Technical Working Group (TWG)

##### 10.4.19.1 Creation of the TWG

The *DOE* shall create and chair a Technical Working Group (“TWG”) to be composed of the *Government* and industry participants immediately after the promulgation of these Rules. Industry Participants, for purposes of this clause, shall be composed of individual representatives coming from:

- (1) P h i l i p p i n e  
I n d e p e n d e n t

- Power Producers' Association (PIPPA);
- (2) Private Electric Plant Owners Association (PEPOA);
- (3) Philippine Rural Electric Cooperative Association (PHILRECA);
- (4) Manila Electric Company (MERALCO);
- (5) National Power Corporation (NPC);
- (6) National Transmission Company (TRANSCO);
- (7) Power Sector Assets and Liabilities Management Corp. (PSALM);

finds necessary and reasonable, including but not limited to:

- (a) Refinements in the dispute resolution process;
- (b) Governance issues;
- (c) Financial transmission rights;
- (d) *Market network model*; and
- (e) *Market dispatch optimization model*;

#### 10.4.19.3 Applicability

Consistent with clause 8.1 that specified Rules change procedure will apply when the *WESM* is in actual operation, the proposed amendments of the TWG and the corresponding official issuance(s) by the *DOE* shall not be covered by the provisions of the Rules change process contained in Chapter 8.

#### 10.4.19.2 Responsibilities

To ensure a smooth transition from promulgation of these Rules to actual commercial operation of the *spot market*, the TWG shall recommend to the *DOE* for its appropriate action, supplemental, *m o d i f i c a t o r y*, clarificatory and other amendments or additional provisions to the *WESM* Rules which the TWG

#### 10.4.19.4 Tenure

The TWG shall be constituted, as soon as possible, meet as often as practicable and shall continue to undertake its functions until the actual operation of the *spot market*.

## CHAPTER 11 GLOSSARY

**AC.** Alternating current.

**Act.** Refers to Republic Act No. 9136 also known as the “Electric Power Industry Reform Act of 2001”.

**Active Energy.** A measure of electrical *energy* flow, being the time integral of the product of *voltage* and the in-phase component of current flow across a *connection point*, expressed in Watthours (Wh) and multiples thereof.

**Administered Price Cap.** A price cap imposed by the *Market Operator* to the *Trading Participants* during *market suspension* and *intervention* to be used for settlements. Said price cap shall be developed and published by the *Market Operator* for *ERC* approval.

**Affected Participants.** A *WESM Member* who is affected by a decision or has a pecuniary interest in a decision.

**AGC.** Automatic Generation Control.

**Ancillary Services.** Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the *transmission system* in accordance with good utility practice, the *Grid Code* and *Distribution Code*.

**Ancillary Services Agreement.** An agreement under which a *WESM Member*, registered as an *Ancillary Service Provider*, agrees to provide *ancillary services*.

**Ancillary services cost recovery charge.** The charge payable by *WESM Members* for recovery of the cost incurred by the *Market Operator* for the provision of *Ancillary Services*.

**Ancillary Services Provider.** A person or an entity providing *ancillary services* and registered with the *Market Operator*.

**Anti-Competitive Behavior.** This refers to *anti-competitive behavior* as defined in the *Act*, *IRR* and other rules and regulations that *ERC* may promulgate.

**Authorization.** A permit, consent, approval, license or other form of authority issued under the *Act* which may be required as a prerequisite for undertaking certain activities in the Philippines electric power industry.

**Autonomous Group Market Operator or “AGMO”.** The *Autonomous Group Market Operator* constituted by the *DOE* under Section 30 of the *Act*, which shall undertake the preparatory work and initial operation of the *WESM* for a period of twelve months from the *spot market commencement date*, initially under the administrative supervision of the *TRANSCO*. For the avoidance of doubt, during that initial twelve month period, all references in the *WESM Rules* to “*Market Operator*” shall be construed to mean “*AGMO*”.

**Bilateral contract.** A contract between parties, the net effect of which is that a defined quantity of electricity has been sold by one party to another, at a particular *node*.

**Billing Period.** The period of one calendar month commencing on 12.00 am on the first day of each calendar month.

**Black Start Capability.** In relation to a *generating unit*, the ability to start and *synchronize* without using *supply* from the *power system*.

**Black Start-up Facilities.** Facilities which provide *black start capability*.

**Business Day.** Any day on which is open for business.

**Central Dispatch.** The process of scheduling by the *Market Operator* and issuing direct instructions to electric power industry participants by the *System Operator* to achieve the economic operation of the *transmission system* while maintaining its quality, stability, *reliability* and security.

**Chairperson.** The person appointed by the *DOE* to chair meetings of the *PEM Board*.

**Check data.** Data supplied to the *Market Operator* by a *Trading Participant* in accordance with clause 3.5.5.3 for the purpose of checking the validity of any future offer or *demand bid* in accordance with clause 3.5.12.

**Confidential Information.** Information which is or has been provided to, or by, a *Participant* or the *Market Operator* under, or in connection with, the *WESM Rules* and is stated under the *WESM Rules* to be, or is classified by the *Market Operator* as, confidential information or is otherwise confidential or commercially sensitive information or is information which is derived from any such information.

**Connect, Connected, Connection.** To form a physical link to or through the *transmission network* or a *distribution network* in such a way as to allow transmission of electricity in accordance with the standards set out in the *Grid Code*.

**Connection Assets.** Any component of a *transmission system* or *distribution system* which, in the reasonable opinion of the *Market Operator*, is associated with a *connection point*, including *metering installations*.

**Connection Point.** The agreed point of *supply* established between a *Network Service Provider* and a *Trading Participant*.

**Constrain-off.** In respect of a *generating unit* the output of that *generating unit* is limited below the level to which it would otherwise have been *dispatched* by the *Market Operator*

on the basis of its *energy offer*.

**Constrain-on.** In respect of a *generating unit*, the output of that *generating unit* is limited above the level to which it would otherwise have been *dispatched* by the *Market Operator* on the basis of its *energy offer*.

**Constraint.** A limitation on the capability of any combination of *network elements*, *loads*, *generating units* or *Ancillary Service Providers* such that it is, or is deemed by the *System Operator* to be, unacceptable to adopt the pattern of transfer, consumption, generation or production of electrical power or other services that would be most desirable if the limitation were removed.

**Constraint violation.** A *constraint* is violated when the loadings of *network elements*, *loads*, *generating units* or *Ancillary Service Providers* involved in that *constraint* combine in such a way as to exceed the limit specified by that *constraint*.

**Constraint Violation Coefficients.** Coefficients set by the *Market Operator* in accordance with clause 3.6.2. The *Market Operator* is to ensure that, if constraints shall be violated, such violation will occur in appropriate priority order.

**Contestable Market.** Refers to the electricity *End-users* who have a choice of a *Supplier* of electricity, as may be determined by the *ERC* in accordance with the *Act*.

**Contingency Reserve.** The ability to respond so as to arrest a significant drop in system *frequency* such as would arise as a result of a credible contingency affecting one (or more) *generating units* within a region, or transmission flows into a region.

**Credit Support.** An obligation owed to the *Market Operator* by a third party supporting the obligations of a *Trading Participant* under clause 3.14.11.

**Credit Support Provider.** The party which assumes *credit support* obligations to the *Market Operator* under clause 3.14.11.

**Customer.** A person who:

- (a) engages in the activity of purchasing electricity *supplied through a transmission or distribution system* other than where all that person's electricity requirements are purchased from a *Supplier*; and
- (b) registers with the *Market Operator* in that capacity under clause 2.3.2.

**Customer Node.** A *market trading node* at which electricity will normally be purchased from the *spot market* and which is classified as a *customer node* in accordance with clause 3.2.2.2.

**Customer Pricing Zone.** A *zone* within which all *customers* will face the same price for electricity consumed, as published by the *Market Operator* in accordance with clause 3.2.3.1.

**Data Collection System.** All equipment and arrangements that lie between the *metering database* and the point where the *metering data* enters the public telecommunications network.

**Data Logger.** A device that collects *energy data* and is capable of being accessed electronically by the *Market Operator* via the *data collection system*.

**Day Ahead Projections.** Projections of market conditions for the day ahead determined and *published* by the *Market Operator* in accordance with clause 3.7.2.

**DC.** Direct Current.

**Default Event.** Any one or more of the events listed in clause 3.14.11.1.

**Default Interest Rate.** An *interest rate* of 2% per annum above the *interest rate*.

**Default Notice.** A notice issued by the *Market Operator* under clause 3.14.11.2.

**Demand Bid.** A standing bid, or *market bid* to buy electricity submitted, or revised, by a *Customer* in accordance with clause 3.5.6, 3.5.9, 3.5.12 or 3.5.13, and containing the information specified in Appendix A1.

**Department of Energy or "DOE".** The government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the *Act*.

**Deregistered WESM Member.** A person who is registered as a *WESM Member* until deregistered under clauses 2.5 and 2.6.

**Direct WESM Member.** A person or an entity who is registered with the *Market Operator* under clause 2.3.

**Director.** A member of the *PEM Board* appointed by the *DOE* under clause 1.4.3 having a duty to, among other matters, perform the duties of management of the *PEM Board*, in accordance with clause 1.4.5.

**Disconnect.** The operation of switching equipment or other action so as to prevent the flow of electricity at a *connection point*.

**Dispatch.** The act by which the *System Operator* initiates all or part of the response offered or bid by a *scheduled generating unit* or *scheduled load* in accordance with clause 3.8.2.

**Dispatch Schedule.** The *target loading levels* in MW for each *scheduled generating unit* or *scheduled load* and for each *reserve facility* for the end of that *trading interval*, determined by the *Market Operator* through the use of a *market dispatch optimization model* in accordance with clause 3.8.1.

**Dispatch Tolerances.** Limits on the extent to which *Trading Participants* may deviate from *dispatch targets* determined by the *System Operator* in accordance with clause 3.8.7.

**Dispatchable Load.** A *load* which is able to respond to *dispatch* instructions and so may be treated as a *scheduled load* in the *dispatch* process.

**Dispatchable Reserve.** The ability to respond to a re-dispatch performed by the *System Operator* during a *trading interval*, on either a regular or an ad hoc basis.

**Dispute Management System.** A system for managing disputes privately between the relevant parties and without resorting to the formal dispute resolution process in clause 7.3, and which has been approved by the *PEM Board* under clause 7.3.3.

**Dispute Resolution Administrator.** A person appointed by the *PEM Board* under clause 7.3.2.1.

**Dispute Resolution Group.** A pool of at least seven experts appointed by the *Dispute Resolution Administrator* from which the *Dispute Resolution Panel* is formed.

**Dispute Resolution Panel.** The panel appointed by the *Dispute Resolution Administrator* in accordance with clause 7.3.5.1.

**Distribution Code.** The set of rules, requirements, procedures, and standards governing *Distribution Utilities* and users in the operation, maintenance, and development of their *distribution systems*. It also defines and establishes the relationship of the *distribution systems* with the facilities or installations of the parties connected thereto.

**Distribution Line.** A power line, including underground cables that is part of a *distribution network*.

**Distribution Network.** A *network* which is not a *transmission network*.

**Distribution Service.** The services provided

by a *Distribution Utility* which are associated with the conveyance of electric power from transmission facilities or *embedded generators* to *End-users* by a *Distribution Utility* through its distribution system pursuant to the provisions of the *Act* and the *IRR*.

**Distribution System.** The system of wires and associated facilities belonging to a franchised *Distribution Utility*, extending between the delivery points on the transmission or *sub-transmission system*, or generator connection and the point of connection to the premises of the *End-User*.

**Distribution Utility.** An *Electric Cooperative*, private corporation, government-owned utility, or existing local government unit, that has an exclusive franchise to operate a *distribution system* in accordance with its franchise and the *Act*, and registered with the *Market Operator* as a *Network Service Provider* under clause 2.3.4.

**Economic Rental.** Means, for a constraint in the *market dispatch optimization model* where the constraint is in linear programming canonical form (that is, for a maximizing optimization model: the sum of the variable terms less than or equal to the constant term), the *shadow price* of the constraint multiplied by the constant term of the constraint.

**EFT Facility.** An electronic funds transfer facility.

**Electric Cooperative.** A cooperative or corporation authorized to provide electric services pursuant to Presidential Decree No. 269, as amended, and Republic Act No. 6938 within the framework of the national rural electrification plan.

**Electronic Communication Procedures.** The procedures established by the *Market Operator* and updated from time to time in accordance with clause 5.2.2.5.



**Electronic Communication System.** A system used by *Trading Participants* and the *Market Operator* for exchange of information in accordance with clause 5.2.2.1.

**Embedded Generators.** Generating units that are indirectly connected to the *Grid* through the *Distribution Utilities'* lines or industrial generation facilities that are synchronized with the *Grid*.

**Emergency.** An event or situation described in clauses 6.3.1.1 and 6.3.1.2.

**Emergency Directions.** Directions issued by the *Market Operator* in an *emergency* under clause 6.5.1.

**End-user.** Any person or entity requiring the *supply* and delivery of electricity for its own use.

**Energy.** Generally, *active energy* and/or *reactive energy* but for the purposes for chapter 3 means *active energy* only.

**Energy Balance Equation.** An equation determined by the *Market Operator* in accordance with clause 3.6.1.4 (c), representing the balance between *generation*, *load* and transmission flows at a particular node of the *market network model*.

**Energy Data.** The data that results from the measurement of the flow of electricity in a power conductor. The measurement is carried out at a *metering point*.

**Energy Regulatory Commission or "ERC".** The independent, quasi-judicial regulatory body created under the *Act*.

**Ex-Ante.** A matter determined in relation to a *trading interval* before that *trading interval* commences.

**Ex-Ante Dispatch.** The *dispatch* targets set for the end of a *trading interval*, immediately preceding the beginning of that *trading interval*.

**Ex-Ante Energy Settlement Price.** The *ex-ante nodal energy price* or the *ex-ante zonal reserve price*, as may be appropriate, determined in accordance with clause 3.10.12.

**Ex-Ante Energy Settlement Quantity.** The gross amount determined by the *Market Operator* in accordance with clause 3.13.5, and adjusted for *bilateral contracts* in accordance with clause 3.13.7.

**Ex-Ante Nodal Energy Price.** The price determined by the *Market Operator* for a particular *market network node* and *trading interval*, immediately prior to commencement of that *trading interval*, directly from the *dispatch optimization* for that *trading interval* in accordance with clause 3.10.2.

**Ex-Ante Zonal Energy Price.** The price determined by averaging *ex-ante nodal energy prices* in accordance with clause 3.10.3.

**Excess Generation.** *Generation* which may be scheduled to occur in excess of load requirements, even though *market energy prices* have fallen to the *market price floor*, and which shall then be dealt with in accordance with clause 3.9.8.

**Ex-post.** A matter determined in relation to a *trading interval* after that *trading interval* concludes.

**Ex-Post Energy Settlement Price.** The *ex-post nodal energy price* or the *ex-post zonal energy price*, as appropriate, determined in accordance with clause 3.10.12.

**Ex-Post Energy Settlement Quantity.** The amount determined by the *System Operator* in accordance with clause 3.8.14.

**Ex-Post Nodal Energy Price.** The price determined by the *Market Operator* for a particular *market node* and *trading interval*, after the end of that *trading interval* in accordance with clause 3.10.6.

**Ex-Post Zonal Energy Price.** A price determined by averaging *ex-post nodal energy prices* in accordance with clause 3.10.11.

**Facility.** A generic term associated with apparatus, equipment, buildings and necessary supporting resources for the *generation*, transmission, *supply*, sale and consumption of electricity.

**Final Statement.** A statement issued by the *Market Operator* under clause 3.14.5.

**Final WESM.** The *spot market* operated by an independent entity to which the functions, assets and liabilities of the *AGMO* are transferred in accordance with Section 30 of the *Act*.

**Financial Year.** A period commencing on 1 July in a calendar year and terminating on 1 July in the following calendar year.

**Force Majeure Event.** An event arising from major network trouble that caused partial or system-wide blackout, market system software failure, and any other event, circumstance or occurrence in nature of, or similar in effect to any of the foregoing.

**Formulation.** A mathematical specification of an optimization model.

**Franchise Area.** A geographical area exclusively assigned or granted to a *Distribution Utility* for *distribution of electricity*.

**Frequency.** For alternating current electricity, the number of cycles occurring in each second. The term Hertz (Hz) corresponds to cycles per second.

**Generating System.** A system comprising one or more *generating units*.

**Generating Unit.** A single machine generating electricity and all the related equipment essential to its functioning as a single entity and having a *nameplate rating* of 1MW or more.

**Generation.** The production of electrical power by converting one form of *energy* to another in a *generating unit*.

**Generation Company.** A person or entity authorized by the *ERC* to operate facilities used in the generation of electricity, and registered with the *Market Operator* in that capacity in accordance with clause 2.3.1.

**Generation Offer.** A *standing offer*, or *market offer* to supply electricity, submitted or revised by a *Generation Company* in accordance with clauses 3.5.5, 3.5.9, 3.5.10 or 3.5.11.

**Generator Node.** A *market trading node* at which electricity will normally be sold to the *spot market* and which is classified as a *generator node* in accordance with clause 3.2.2.2.

**Government.** The Government of the Philippines.

**Government Authority.** Any government or governmental, semi-governmental, administrative or judicial body, department, commission, authority, tribunal, agency or entity.

**Grid.** The high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may otherwise be determined by the *ERC* in accordance with Section 45 of the *Act*.

**Grid Code.** The set of rules, requirements, procedures, and standards to ensure the safe, reliable, secured and efficient operation, maintenance, and development of the high voltage backbone Transmission Systems and its related facilities.

**Gross Ex-Ante/Ex-Post Energy Settlement Quantity.** The *ex-ante/ex-post energy settlement quantity* determined in accordance with clauses 3.13.5/3.13.6 for a *market trading node*, in a *trading interval*

before any adjustment for *bilateral contracts*.

**HVDC.** High Voltage Direct Current.

**Indirect WESM Member.** A person or an entity who wishes to indirectly trade in the spot market. However, an *Indirect WESM Member* may only transact through a direct *WESM Member*.

**Installation Database.** The database which a *Market Operator* is required to keep in respect of its *metering installations* pursuant to clause 4.7.

**Interest Rate.** In relation to any period for which an interest rate is to be determined hereunder, a rate per annum equal to the prevailing 91-day Treasury Bill rate published by the Bureau of Treasury.

**Interim WESM.** The *spot market* operated by *AGMO* for a period of twelve months from the *spot market commencement date* or until such time that *AGMO* ceases to exist.

**Intending WESM Member.** A person who wishes to become a *WESM Member* and who registers with the *Market Operator* under clause 2.9.

**Interruptible Load.** Means *load* that a *Customer* is able to interrupt at very short notice in response to:

- (a) A *frequency* deviation; or
- (b) A request of the *System Operator*,

In order to meet *contingency reserve* requirements, subject to the requirements of the *Grid Code* and *Distribution Code*.

**Intervention.** A measure taken by the *System Operator* when the *grid* is in extreme state condition as established in the *Grid Code* arising from a threat to *system security*, *force majeure* or *emergency*. During such event, the *administered price cap* shall be used for settlements.

**Line Rental.** The *economic rental* arising from the use of a *transmission line*, calculated as the difference in value between flows out of the *receiving node* of that line and flows into the *sending node*, in accordance with clause 3.13.12.

**Load.** The amount of *energy* consumed in a defined period via a *node*.

**Load Forecast.** Has the same meaning as *net load forecast*.

**Load Shedding.** Reducing or *disconnecting load* from the *power system*.

**Load Weighted Average.** An average produced by multiplying each *nodal energy price* by the *load* at that *node*, summing the results, and then dividing by the sum of the *loads* involved.

**Loading Level.** The instantaneous level of output or consumption (in MW) of a *generating unit* or *load*.

**Local Supplier.** In relation to a *local area*, the *Market Customer* who is responsible for the *supply* of electricity to *franchise customers* in that *local area*.

**Locationally Specific Reserve Requirement.** A requirement for a particular *reserve category* to be met at a particular location, by *reserve facilities* in a particular *reserve region* in accordance with clause 3.3.5, and with costs to be recovered from a particular *reserve cost recovery zone*, in accordance with clause 3.3.5.

**Loss Differential.** Has the same meaning as *agreed loss differential*.

**Margin Call.** An amount which the *Market Operator* calls to be paid by a *Trading Participant* in accordance with clause 3.15.10.1 to make up any anticipated shortfall between that *Trading Participant's trading limit* and the *Market Operator's exposure* in respect of that *Trading Participant*.

**Market Bid.** A *demand bid* for a particular *trading interval* of a *particular trading day* in the current *market horizon*, whether formed from a *standing bid* in accordance with clause 3.5.10 or revised by the relevant *trading participant*, in accordance with clause 3.5.11.

**Market Dispatch Optimization Model.** The optimization model which contains the mathematical algorithm approved by the *PEM Board* to be used for the purposes of determining *dispatch schedules* and *energy prices*, and preparing *market projections based on the price determination methodology* approved by *ERC*.

**Market Fees.** The charges imposed on all *WESM members* by the *Market Operator* to cover the cost of administering and operating the *WESM*, as approved by the *ERC*.

**Market Horizon.** A period for which *day-ahead* or *week-ahead projections* are performed, as defined in the *timetable*.

**Market Information Web Site.** A facility to be established by the *Market Operator* on the *electronic communication system* on which it may *publish* information which is then available to and may be accessed by *WESM Members*.

**Market Load.** The electricity delivered to a *connection point* and purchased by a *Customer* from the *spot market*.

**Market Network Lines.** Actual or notional *network lines* joining market network *nodes* within the *market network model*.

**Market Network Model.** A mathematical representation of the *power system*, which will be used for the purpose of determining *dispatch schedules* and *energy prices*, and preparing *market projections*.

**Market Offer.** A *generation offer* for a particular *trading interval* of a particular *trading day* in the current *market horizon*,

whether formed from a *standing offer* in accordance with clause 3.5.10 or revised by the relevant *trading participant*, in accordance with clause 3.5.11.

**Market Operator.** The entity responsible for the operation of the *spot market* governed by the *PEM Board* in accordance with clause 1.4 which, for the avoidance of doubt, is the *AGMO* for a period of twelve months from the *spot market commencement date* and thereafter the entity to which the functions, assets and liabilities of the *AGMO* are transferred in accordance with section 30 of the *Act*.

**Market Price.** A generic term covering prices for *energy* and *reserve*, *ex-ante* or *ex-post*, *nodal* or *zonal*, as appropriate.

**Market Projections.** *Week ahead* or *day ahead projections* of *spot market* conditions, performed in accordance with clause 3.7.

**Market Surveillance Committee.** The Committee appointed under clause 1.6.

**Market Suspension.** An event wherein the *ERC* declares the operation of the *spot market* to be suspended in cases of natural calamities or national and international security emergencies. During such event, the *administered price cap* shall be used for settlements.

**Market Trading Nodes.** Those *nodes* at which electricity will be either bought or sold from the *spot market*, defined in accordance with clause 3.2.2.

**Market Transaction.** A sale or purchase of electricity, or other services, made through the *spot market*.

**Meter.** A device, which measures and records the consumption or production of electricity.

**Metered Quantity.** The quantity of electricity sold or purchased from the *spot market*

(as applicable), determined by the *Market Operator* from *metering data*.

**Metering.** Recording the production or consumption of electrical *energy*.

**Metering Data.** The data obtained or derived from a *metering installation*.

**Metering Database.** The database kept by the *Market Operator* pursuant to clause 4.7.

**Metering Installation.** The *meter* and associated equipment and installations installed or to be installed for the collection of *metering data* required for *settlement* purposes.

**Metering Point.** The point of physical *connection* of the device measuring the current in the power conductor.

**Metering Services Provider.** A person or entity authorized by the *ERC* to provide *metering services* and registered with the *Market Operator* in that capacity in accordance with clause 2.3.6.

**Metering Register.** A register of information relating to *metering installations* kept by the *Market Operator* and forming part of the *metering database*.

**MW.** Mega Watt.

**Nameplate Rating.** The maximum continuous output or consumption in *MW* of an item of equipment as specified by the manufacturer.

**National Power Corporation or “NPC”.** The government corporation created under Republic Act No. 6395, as amended.

**National Transmission Corporation or “TRANSCO”.** The corporation organized pursuant to the *Act* to acquire all the transmission assets of the *NPC*.

**Net Load Forecast.** A forecast, prepared in accordance with the procedures to be developed under clause 3.5.4, of the *load*, net of any non-scheduled generation, to be matched, along with any *scheduled load*, by generation from scheduled *generation facilities*.

**Net Settlement Surplus.** The *settlement surplus* remaining after all *market transactions* have been accounted for, including the assignment of *transmission line rentals* to *Network Service Providers*. This remainder is assumed to be attributable to *economic rentals* arising from other binding constraints, and accounted for in accordance with clause 3.13.16.

**Network.** The apparatus, equipment and *plant* used to convey, and control the conveyance of, electricity to *customers* (whether wholesale or retail) excluding any *connection equipment*. In relation to a *Network Service Provider*, a *network* owned, operated or controlled by the *Network Service Provider*.

**Network Constraints.** Constraints representing network characteristics, such as limits on *transmission line* flows to be included in the *market dispatch optimization model* in accordance with clause 3.6.1.4 (f).

Network Lines. The:

- (a) *transmission lines*;
- (b) *distribution lines*;
- (c) *transformer* elements; and
- (d) other plant associated with transmission lines and distribution lines.

**Network Service.** *Transmission services* or *distribution services* associated with the conveyance, and with controlling the conveyance, of electricity through the *network*.

**Network Service Provider.** A person who engages in the activity of owning, controlling,

or operating a *transmission or distribution system* and who is registered with the *Market Operator* in that capacity under clause 2.3.4.

**Nodal Energy Price.** The *energy price* at a *node* determined *ex ante* or *ex-post*.

**Nodal Value of Lost Load (Nodal VoLL).** Means the *constraint violation coefficient* of the *energy balance equations* for each *node* set by the *Market Operator* in accordance with clause 3.6.2.3.

**Node.** A *connection point* on a *network*, or junction point within a *network model*, whether physical, or notional.

**Non-Scheduled Generating Unit.** A *generating unit* or a group of generating units connected at a common point with a nameplate rating and a combined nameplate rating of less than one tenth of one percent (<0.1%) of the peak load in a particular reserve region, or less than ten percent (<10%) of the size of the interconnection facilities, whichever is lower.

**Normally Off.** A situation in which a *load* does not exist unless it is bid into the *spot market*.

**NRE Generating Unit with Intermittent Energy Resource.** A new and renewable energy generating unit or group of units connected to a common connection point whose energy resource is location specific and has a natural variability which renders the output unpredictable and the availability of the resource inherently uncontrollable, which include plants utilizing wind or ocean energy.

**Opportunity Cost.** The economic loss suffered by some party as a result of losing an opportunity, such as the opportunity to sell *energy* to the *spot market*.

**Outage.** Any full or partial unavailability of equipment or *facility*.

**Over-Riding Constraints.** Constraints imposed in the *market dispatch optimization model* by the *Market Operator*, at the recommendation of the *System Operator*, with the intention of over-riding the effect of a *Trading Participant's* offers or *demand bids* in accordance with clause 3.5.13.

**Payment Date.** The relevant date on which a *Trading Participant* shall pay to the *Market Operator* the *settlement amount* in accordance with clause 3.14.9.

**PEM Auditor.** The auditor appointed by the *PEM Board* under clause 1.4.6 to undertake functions as set out in clause 1.5.

**PEM Board.** The group of *Directors* serving from time to time on the board that is responsible for governing the *WESM*.

**Plant.** Any equipment involved in generating, utilizing or transmitting electrical *energy*.

**Power System.** The integrated system of *transmission* and *distribution networks* for the *supply* of electricity in the Philippines.

**Pricing error notice.** A notice issued in accordance with clause 3.9.6 advising the market that the *ex ante prices* for a particular *trading interval* are unavailable, or invalid.

**Projection.** A set of results derived in accordance with clause 3.7 from a series of *market dispatch optimization model* runs describing projected market conditions over a *day-ahead* or *week-ahead market horizon* for a particular *scenario* of *net forecast load*, and set of assumptions with respect to availability of key system elements.

**Prudential Requirements.** The requirements imposed on a *Trading Participant* to provide and maintain a security in accordance with clause 3.15.

**Publish, Publication.** To make available information.

**Ramp Rate.** The rate of change in electricity production or consumption from a *generating unit* or *scheduled load*.

**Reactive Energy.** A measure in varhours (varh) of the alternating exchange of stored *energy* in inductors and capacitors, which is the time integral product of *voltage*, and the quadrature component of current flow across a *connection point*.

**Reactive Power.** The rate at which *reactive energy* is transferred, produced or purchased by a *Customer*.

**Reactive Support.** Unutilized sources of *reactive power* arranged by the *Market Operator* to be available to cater for the possibility of unavailability of another source of *reactive power* or increased requirements for *reactive power*.

**Receiving node.** For a *transmission line*, the *node* from which there is a net flow of electricity out of that line in a particular *trading interval* to be accounted for in determining the *line rental*, in accordance with clause 3.13.12. For a *transmission right*, the *node* to which the issuer of the *transmission right* is deemed to guarantee transfer of electricity, to be advised to the *Market Operator* in accordance with clause 3.13.2 and accounted for in accordance with clause 3.13.15.

**Regulating Reserve.** The ability to adjust generation continuously in response to small frequency changes, so as to cover load fluctuations or minor breakdowns, defined as an *ancillary service* in clause 3.3.4.2 (a).

**Reliability.** The probability of a system, device, *plant* or equipment performing its function adequately for the period of time intended, under the operating conditions encountered.

**Reserve.** *Contingency reserve* or *regulating reserve*.

**Reserve Category.** A particular kind or class of *reserve* as under clause 3.3.4.2.

**Reserve Cost Recovery Charges.** Charges to recover the costs incurred in purchasing *reserve*, to be determined by a formula approved by the *ERC*.

**Reserve Cost Recovery Zone.** A zone within which *reserve cost recovery charges* may be recovered to meet each locationally specific requirement.

**Reserve Effectiveness Factor.** A factor to define the effectiveness of *reserve* from a particular *type* of *reserve provider* in meeting requirements for particular *reserve categories*.

**Reserve Facility.** A *facility* capable of providing *reserves*.

**Reserve Facility Category.** A particular type of *reserve facility*, characterized by its technology (eg *interruptible load*, *synchronized generation*, *non-synchronized generation*) which is reflected in the type of offer it can make, and the *reserve effectiveness factor*.

**Reserve Offer.** A *standing offer*, or *market offer* to supply *reserves*, submitted or revised by a *Customer* or *Generation Company* in accordance with clause 3.5.7, 3.5.8, 3.5.10 or 3.5.11.

**Reserve Region.** A zone of the *power system* from which a particular *reserve category* can be supplied to meet a particular locationally specific requirement.

**Reserve Requirement Constraint** A mathematical representation of a locationally specific reserve requirement, and included in the *market dispatch optimization model* in accordance with clause 3.6.1.4 (e).

**Rules Change Committee.** The committee of that name established in accordance with clause 8.2 and which acts in accordance with

chapter 8.

**Run.** A particular instance of the *market dispatch optimization model* performed for a particular *trading interval*, or a set of such instances *model* performed for all the *trading intervals* in a market horizon.

**Safety Plan.** A plan which shall be developed by certain *WESM Members* in accordance with the *Grid Code* and *Distribution Code*, and applicable safety legislation and regulations in the Philippines.

**Scenario.** A *net load forecast* covering a *market horizon*.

**Scheduled Generating Unit.** A *generating unit* so classified in accordance with clause 2.3.1.2 (a)(1). A *generating unit* or a group of *generating units* connected at a common connection point with a *nameplate rating* or a combined *nameplate rating* of greater than or one tenth of one percent (>0.1%) of the peak load in a particular *reserve region*.

**Scheduled Generation Company.** A *Generation Company* that is required to play an active role in the *spot market* by submitting *generation offers*, and being subject to central dispatch.

**Scheduled Load.** A *load* which is able to respond to *dispatch* instructions, and has been bid into the *spot market* using a *demand bid* and so may be scheduled and *dispatched* via the scheduling and dispatch procedures.

**Sending node.** For a *transmission line*, the *node* into which there is a net flow of electricity out of that line in a particular trading interval to be accounted for in determining the *line rental*, in accordance with clause 3.13.12. For a *transmission right*, the *node* from which the issuer of the transmission right is deemed to guarantee transfer of electricity, to be advised to the *Market Operator* in accordance with clause 3.13.2 and accounted for in accordance with clause 3.13.15.

**Settlement.** The activity of producing bills and credit notes for *WESM Members* in accordance with clause 3.13, and with the processes defined in clause 3.14.

**Settlement Amount.** The amount payable by or to a *Trading Participant*, or *Network Service Provider*, in respect of a *billing period* as determined by the *Market Operator* under clause 3.13.14 or clause 3.13.15.

**Settlement Price.** An *ex-ante* or *ex-post* *energy settlement price*.

**Settlement Quantity.** An *ex-ante* or *ex-post* *energy settlement quantity*, or a *zonal reserve settlement quantity*.

**Settlement Surplus.** The *settlement surplus* remaining after all *market transactions* have been accounted for, including the assignment of *transmission line rentals* to *Network Service Providers*. This remainder is assumed to be attributable to *economic rentals* arising from other binding constraints, and accounted for in accordance with clause 3.13.15.

**Settlement System.** The system, including the computerized system, for conducting *settlements*.

**Shadow Price.** Means the marginal net benefit from a unit relaxation of the capacity limitation of a *constraint* in the *market optimization model*.

**Spot Market.** Has the same meaning as the *WESM*.

**Spot Market Commencement Date.** The date on which the *spot market* commences operation as declared by the *DOE*.

**Standing network data.** Standing data describing a particular network, provided by the relevant *Network Service Provider* data in accordance with clause 3.5.2.



**Standing Offer/Bid.** A standing offer to sell *energy* or *reserve*, or a bid to buy *energy*, submitted by the relevant *Trading Participant* in accordance with clause 3.5.5, 3.5.6, 3.5.7 or 3.5.8, and revised from time to time in accordance with clause 3.5.9, and effective until over-ridden by submission of a specific *market offer* in accordance with clause 3.5.11.

**Status.** The actual operating condition of a generation unit or facility, including its current commitment state, generation level, and AGC activation status.

**Supplier.** Any person or entity licensed by the *ERC* to sell, broker, market or aggregate electricity to *End-users*, and registered with the *Market Operator* as a *Customer* under clause 2.3.2.

**Supply.** The sale of electricity by a party other than a *Generation Company* or a *Distribution Utility* in the franchise area of a *Distribution Utility* using the wires of such *Distribution Utility*.

**Suspension Notice.** A notice issued by the *Market Operator* under clause 3.15.7.

**System Blackout.** The absence of *voltage* on all or a significant part of the *transmission system* or within a *region* following a major *supply* disruption, after one or more *generating systems* and a significant number of *customers*.

**System Operator.** The party identified as the *System Operator* pursuant to the *Grid Code* which is the party responsible for generation dispatch, the provision of ancillary services, and operation and control to ensure safety, power quality, stability, reliability and security of the *grid*.

**System Security.** The safe scheduling, operation and control of the *power system* on a continuous basis in accordance with the *system security and reliability guidelines* established under the *Grid Code*.

**System Security and Reliability Guidelines.** The standards governing *system security* and *reliability* of the *power system*, which may include but are not limited to standards for the *frequency* of the *power system* in operation and *ancillary services* (including guidelines for assessing requirements and utilization), developed by the *Market Operator* and *System Operator* in accordance with the *Grid Code*.

**Target Loading Level.** The loading level determined as an end-of-period target for a *scheduled generator* or *load* by the *Market Operator* in accordance with clause 3.8.1(e).

**Time Stamp.** The means of identifying the time and date at which data is transmitted or received.

**Timetable.** The timetable prepared by the *Market Operator* for operation of the *spot market* in accordance with clause 3.4.2.

**Trading Amount.** The amount to be paid by, or paid to a *Trading Participant*, or *Network Service Provider* in respect of *energy*, *reserve*, *line rentals*, or *transmission rights* calculated in accordance with clauses 3.13.7, 3.13.8, 3.13.9, 3.13.10, or 3.13.14 respectively.

**Trading Day.** The 24-hour period commencing according to the *Timetable*.

**Trading Interval.** A 1-hour period commencing on the hour.

**Trading Limit.** In respect of a *Trading Participant* at any time means the last *trading limit* set by the *Market Operator* for the *Trading Participant* under clause 3.15.8.

**Trading Participant.** A *Customer* or *Generation Company*.

**Transmission Line.** Means a power line that is part of a *transmission network*.

**Transmission Network.** A *network* operating at nominal *voltages* of 220 kV and above plus:

- (a) any part or a *network* operating at nominal *voltages* between 66kV and 220 kV that operates in parallel to and provides support to the higher *voltage transmission network*;
- (b) any part of a *network* operating at nominal *voltages* between 66 kV and 220 kV that does not operate in parallel to and provide support to the higher *voltage transmission network* but is deemed by the *Government* to be part of the *transmission network*.

**Transmission Right.** The right to financial compensation based on differences between *nodal energy prices* at different *market trading nodes* as notified under clause 3.13.2, and settled in accordance with clause 3.13.15.

**Transmission System.** The *transmission network* together with the *connection assets* associated with the *transmission network*, which is *connected* to another *transmission* or *distribution system*.

**Type.** Has the same meaning as *reserve facility category*.

**Unrestrained Load.** Means the *unscheduled load* which might have been expected by the *Market Operator*, at any particular point in time, with no *load shedding* and assuming *scheduled loads normally off*.

**Vital Loads.** *Loads* defined as sensitive by the *Trading Participants*.

**VoLL.** Has the same meaning as *Nodal VoLL*.

**Voltage.** The electronic force or electric potential between two points that give rise to the flow of electricity.

**Week Ahead Projections.** The projections performed for the *week-ahead market horizon* by the *Market Operator* in accordance with clause 3.7.1.

**WESM Member.** A person who is registered with the *Market Operator* in accordance with clauses 2.3 and 2.4.

**Wholesale Electricity Spot Market (“WESM”).** The electricity market established by the *DOE* in accordance with the *Act*.

**WESM Participants.** All *Generation Companies, Distribution Utilities, Suppliers, Aggregators, End-users, the TRANSCO* or its Buyer or Concessionaire, IPP Administrators, and other entities authorized by the *ERC* to participate in the *WESM* in accordance with the *Act*.

**WESM Rules.** The detailed rules that govern the administration and operation of the *WESM*.

**Zonal Energy Price.** An *ex-ante* or *ex-post zonal energy price*.

**Zonal Reserve Price.** The price for *reserve* in a particular *supply zone*, and trading interval, determined in accordance with clause 3.10.10.

**Zonal Reserve Settlement Quantity.** The amount of *reserve* deemed to have been supplied by a *reserve supplier* in a particular *reserve region* and *trading interval*, determined in accordance with clause 3.13.4.

## APPENDICES

### APPENDIX A APPENDICES TO CHAPTER 3

Appendix A1. Information to be Supplied with Offers to Supply and to Buy Electricity

#### A1.1 Generation Offer

Generation offers:

- (a) Shall include the location of the *connection point* and relevant *market network node*;
  - (b) Shall include the *pricing zone* of the *connection point*;
  - (c) May include up to ten (10) *energy* offer blocks per (aggregate) unit;
  - (d) Shall be for a minimum block size of five (5) MW;
  - (e) Shall have monotonically increasing prices, starting from zero *generation*;
  - (f) May include negative prices;
  - (g) Shall include maximum up/down *ramp rates*;
  - (h) Shall include a validity period of offers (e.g. valid for specified period or valid until offer is revised.); and
  - (i) Shall include an operating range (upper and lower limit).
- (b) A minimum and maximum *energy dispatch* level (MW) at which any AGC reserve response will be available;
  - (c) Up to 3 *reserve* offer blocks per aggregate unit (MW/block);
  - (d) A minimum block size of one (1) MW;
  - (e) Monotonically increasing prices starting from zero for the first offer block, which shall correspond to the mandatory reserve capability required from that *Generation Company* under its connection agreement; and
  - (f) Shall include validity period of reserve offers.

*Contingency reserve* offers from *Generation Companies* shall consist of:

#### A1.2 Reserve Offers

Regulation *reserve* offers from *Generators* shall consist of:

- (a) A maximum response level for the relevant reserve category (MW);
- (b) A maximum response level for the relevant *reserve* category (MW);
- (c) A minimum *energy dispatch* level (MW) at which that maximum *reserve* response will be available;
- (d) Up to 3 *reserve* offer blocks per aggregate unit (MW/block);
- (e) A minimum block size of five (5) MW;
- (f) Monotonically increasing prices starting from zero for the first offer block, which shall correspond to the mandatory *reserve* capability required from that *Generation Company* under its connection agreement;
- (f) Shall include validity period of reserve offers; and

(g) Operating range (upper and lower limit).

*Contingency reserve* offers from *Customers* shall consist of:

- (h) A maximum response level for the relevant *reserve* category (MW);
- (i) A maximum proportion of the forecast/*scheduled load* which may be interrupted;
- (j) Up to 3 reserve offer blocks (MW/block);
- (k) A minimum block size of one (1) MW;
- (l) Monotonically increasing prices; and
- (m) Shall include validity period of reserve offers.

### **A1.3 Demand Bids**

Demand bids:

- (a) Shall have up to 10 bid blocks per take-off point;
- (b) Shall have a minimum block size of one (1) MW;
- (c) Shall have monotonically decreasing prices;
- (d) Shall start from a zero offtake;
- (e) May have bid prices that are negative;

and

- (f) Shall include a validity period of bids.

Appendix A2. Information to be Supplied by Network Service Provider

### **Network Characteristics**

Most of these information will be supplied as standing data which will be updated only as required for a trading interval.

*Network Service Providers* data submitted are to consist of:

- (a) Topology of the *market network model*;
- (b) Impedances of lines, and other system components;
- (c) Loss functions for each line and system component expressed as a quadratic function; and
- (d) Limits on lines and other system components including:
  - (1) Thermal limits for normal operations;
  - (2) Thermal overload limits of specific duration; and
  - (3) Contingency limits.
- (e) Limits on the operation of HVDC equipment

**APPENDIX B  
APPENDICES TO CHAPTER 4**

Appendix B1. Metering Register

**B1.1 General**

The *metering register* forms part of the *metering database* and holds *metering* information relating to *metering installations*.

The purpose of the *metering register* is to facilitate:

- (1) The registration of connection points, metering points and affected Participants;
- (2) The verification of compliance with the *WESM Rules*; and
- (3) The audit flow of changes to the registered information.

**B1.2 Metering register information**

*Metering* information to be contained in the *metering register* should include such information as the *Market Operator* considers reasonably necessary and by way of example, may include the following:

- (a) *Meter* identification:
  - (1) *Metering installation* identification number; and
  - (2) Identification of equipment related to, and associated with, the *metering installation*.
- (b) Location in *spot market*:
  - (1) Transmission or distribution *connection point* identification; and
  - (2) Details of the site at which the *meter* is located, including the owner of the site.

- (c) Associated parties:

- (1) *Metering data* agency identification;
- (2) *Metering Services Provider* identification;
- (3) *Market Trading Participant* settling account identification;
- (4) *Local Supplier* identification; and
- (5) Relevant *Network Service Provider* identification.

- (d) Data validation and substitution processes agreed between *affected Participants*, including:

- (1) Algorithms;
- (2) Data comparison techniques
- (3) Processing and alarms; and
- (4) Alternate data sources.

**Appendix B2. Installation Database**

Each *installation database* shall contain the following installation information and such other installation information as specified by the *Market Operator*:

- (a) *Metering point* reference details, including:
  - (1) Locations and reference details (*e.g.* drawing numbers);
  - (2) Site identification names;
  - (3) Standard equipment identification numbering (SEIN) in accordance with the *Grid Code* and *Distribution Code*;
  - (4) Details of *affected Participants* associated with the *Metering point*; and

- (5) The *Metering Services Provider*.
- (b) The identity and characteristics of *metering* equipment including:
  - (2) Serial numbers;
  - (3) *Metering installation* identification name;
  - (4) *Metering installation* types and models;
  - (5) Current test and calibration programme details, test results and references to test certificates as required under the *Grid Code* and *Distribution Code*;
  - (6) Calibration tables, where applied to achieve *metering installation* accuracy as required under the *Grid Code* and *Distribution Code*; and
- (7) Data register coding details.
- (c) Data communication details, including:
  - (a) Telephone number(s) (or frequency details in the case of telemetric equipment) for access to data;
  - (b) Communication equipment type and serial numbers;
  - (c) Communication protocol details or references;
  - (d) Data conversion details;
  - (e) User identifications and access rights; and
  - (f) “Write” password (to be contained in a hidden or protected field).

## APPENDIX C APPENDICES TO CHAPTER 7

Background Note to

### Appendix C1 Classification of Rules

The following Background Note is included for information purposes only - it does not form part of the *WESM Rules*. It is intended to provide a general indication of the basis on which the classification of the *WESM Rules* has been made, and a guide, only, for the classification of future new Rules.

#### *The Act*

The Act provides for the *ERC* to have responsibility for:

- (a) The enforcement of the *WESM Rules* and, as a consequence;
- (b) The imposition of fines and penalties for breaches of the *WESM Rules*.

To facilitate its responsibility in this regard, the *WESM Rules* have been classified into three categories as follows:

- (a) Administrative penalty provisions;
- (b) Conduct provisions;
- (c) Regulatory provisions.

Although the initial classification of the *WESM Rules* is included as part of this Background Note, for information purposes only, to provide an indication of the nature of provisions which are likely to be classified into each category, it is important to note that regulations made under the *Act* may be made which alter this initial classification. The classification of the *WESM Rules* is very much a policy issue which may involve considerable consultation. However, this classification may assist in that process or be adopted if that process does not proceed.

The table below summarizes the information contained in this Background Note.

Classification of Rules	Who can bring action	Nature of sanction (imposed by ERC)
Administrative Penalty Provisions	<i>ERC</i>	Penalties
Regulatory Provisions	<i>ERC</i>	Injunction declaration
Conduct Provisions	Any person	Damages injunction declaration

#### *Provisions Requiring Classification*

Those provisions of the *WESM Rules* which impose an obligation on a person have been classified. Where a provision of the *WESM Rules* allows a discretion on the relevant person as to whether or not to do something, that provision has not been classified, as it will not be a breach of that provision if the person decides not to perform in accordance with that provision.

#### *Administrative Penalty Provisions*

Administrative penalty provisions are provisions the breach of which is regarded as most serious. Generally, they are provisions which shall be complied with in order to ensure that the *spot market* and the *WESM Rules* work properly.

Administrative penalty provisions are enforceable only by the *ERC*, who may bring proceedings for the levy of a administrative penalty, *i.e.* a fine for an offence provable on the balance of probabilities. Any person can advise the *ERC* of an alleged breach of a administrative penalty provision, although it is up to the *ERC* to take the matter further. Clause 7.2.2 of the *WESM Rules* also provides a mechanism by which the *Market Operator*, on its own account or on the advice of a *WESM Member*, can decide to bring an alleged breach to the attention of the *ERC*.

### *Conduct Provisions*

A conduct provision is a provision involving an obligation to be performed by a person where the consequences of a breach are less serious than for an administrative penalty provision. Most provisions of the *WESM Rules* that are not of an administrative nature or are to be performed by the *Market Operator* will be classified as conduct provisions. However, generally, an obligation to pay money, including one imposed on the *Market Operator*, will be classified as a conduct provision.

Conduct provisions are enforceable by any person by bringing injunction proceedings. In addition, anyone who suffers loss or damage by conduct in contravention of a conduct provision will also have a statutory right to recover the loss or damage in a civil action against the person whose breach of the *WESM Rules* caused it. However, this right is subject to the dispute resolution procedures in clause 7.3, which require a *Participant* to take any action relating to the *WESM Rules*

in accordance with those dispute resolution procedures, before resorting to other formal legal recourse (such as the courts).

### *Regulatory Provisions*

Regulatory provisions generally fall into two main categories:

- (a) Obligations to be performed by the *Market Operator* (other than obligations to pay money, which will be classified as conduct provisions); and
- (b) Obligations of an administrative nature.

The injunction remedy will be available for breaches of regulatory provisions, on application by the *Government*.

### *Rules May be in Two Categories*

An administrative penalty provision may be a conduct provision or a regulatory provision as well, but conduct provisions and regulatory provisions are mutually exclusive.



## DEPARTMENT CIRCULAR NO. 2004-07-008

### AMENDMENTS TO THE WESM RULES

---

**WHEREAS**, Republic Act No. 9136, otherwise known as the “Electric Power Industry Privatization Act of 2001” (the “Act”), which became effective on 26 June 2001, provides for the framework for the restructuring of the electric power industry to bring about a free and fair competition on the pricing of electricity;

**WHEREAS**, the Act mandates the establishment of a wholesale electricity spot market (the “WESM”) where the trading of electricity can be made;

**WHEREAS**, the Act enjoined the Department of Energy (the “DOE”) to establish the WESM and to jointly formulate with the electric power industry participants the detailed rules thereof, within one (1) year from the effectivity thereof, provided, that the price determination methodology shall be subject to the approval of the Energy Regulatory Commission (the “ERC”);

**WHEREAS**, in accordance with and in compliance with the Act, the DOE promulgated the WESM Rules under DEPARTMENT CIRCULAR NO. 2002-06-003 dated 28 June 2002;

**WHEREAS**, in compliance with the Act, the pertinent application for approval of the Price Determination Methodology (the “PDM”) for the WESM was submitted to the ERC for approval;

**WHEREAS**, the ERC, through its Order dated 15 March 2004 in ERC Case No. 2003-356 required compliance with certain directives before the said price determination methodology may be approved, which directives requires, in turn, the amendment of the WESM Rules;

**WHEREAS**, in compliance with the ERC directives, the DOE jointly with the electric industry participants through the Philippine Electricity Market Corporation and its technical working group and sub-committees, and in accordance with the provisions of the WESM Rules on Rules Change, formulated the pertinent amendments to the WESM Rules;

**NOW THEREFORE**, pursuant to its mandate under the Act and in accordance with the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules:

#### (A) Amendments to the WESM Rules

- (1) Rule 3.2.2 is amended to insert Rule 3.2.2.3(A) before Rule 3.2.2.4

“Nodal Prices at Market Trading Nodes shall be used for the settlement of energy for both generators and customers.”

- (2) Rule 3.2.3.1 is amended to read as follows –

“Customer nodes may be grouped into customer pricing zones in accordance with the procedures to be developed by the Market Operator and subject to the approval of the PEM Board. The Market Operator shall maintain and publish the customer pricing zones to be used for the settlement of energy for customers.”

- (3) Rule 3.2.3.2 is amended to read as follows –

“All customers within a customer pricing zone shall face the same price for electricity consumed.”

- (4) Rule 3.5.4.1 is amended to read:

“Each Customer may submit a forecast in respect of each trading interval for each of its registered load facilities for each trading day of week in accordance with the timetable. The forecast submitted by the Customer shall be used by the Market Operator in the preparation of Net Load Forecast.

“If the Customer fails to submit a forecast of his load facilities in accordance with the timetable, the forecast prepared by the Market Operator at the node where the customer is located shall be used.”

- (5) Rule 3.13.1.1 (b) is amended to read –

“(b) Identify the counter party to the bilateral contract and the party that will pay the line rental trading amount associated with the bilateral contract quantity submitted; and”

- (6) Rule 3.13.15 is hereby deleted.

- (7) Rule 3.13.16.2 is amended to read –

“The net settlement surplus:

“(a) May be retained by the Market Operator to fund deficit as a result of transactions required in clauses 3.13.14, or may be flowed back to the Market Participants in accordance with the procedures to be developed under clause 3.13.16.3, or, may be used by the Market Operator to establish and support the market for Financial Transmission Rights subject to the approval of the PEM Board; and,

“(b) Shall be clearly accounted for and taken into account when setting the allowable charges under any regulatory instruments applying to the Market Operator.”

- (8) Rule 3.13.16.3 is amended to read –

“The Market Operator shall:

“(a) publish regular summary reports on the amount of any net settlement surplus being generated;

“(b) within one year from spot market commencement date, and every year thereafter, publish a review of the underlying factors giving rise to any net settlement surplus, and attempt to identify any binding constraints which may have caused or contributed to such net settlement surplus;

“(c) determine, in consultation with Trading Participants and Network Service Providers, and subject to approval by the PEM Board, whether the net settlement surplus generated by any particular set of constraints is of such magnitude as to justify development of a regime similar to that implemented in the *WESM Rules* with respect to transmission line rentals and transmission rights;

“(d) develop procedures on the possible uses of net settlement surplus subject to approval by the PEM Board; and

“(e) continuously review the procedures on possible uses of net settlement surplus to the extent the Market Operator considers it to be reasonably necessary to promote WESM objectives. Any changes made on the procedures shall have approval from the PEM Board.”

- (9) Rule 3.13.17 shall be added and shall read as follows –

“Rule 3.13.17 Settlement Amounts for Trading Participants with Bilateral Contracts

“3.13.17.1 For each billing period, the Market Operator shall determine the settlement amount for each trading participant with bilateral contract as the sum of the aggregate trading amounts for the trading intervals in that billing period, determined in accordance with clause 3.13.17.2.

“(a) Any amount payable by the Market Operator to that Trading Participant in respect of that billing period and not accounted for in clause 3.13.17.2, including payment for any ancillary services purchased on behalf of the System Operator, less the sum of

“(b) Any market fees which that Trading Participant is required to pay in respect of that billing period as determined in accordance with clause 2.10; plus

“(c) Any other amounts payable by that Trading Participant to the Market Operator in respect of that billing period, including any ancillary services recovery charges.

“3.13.17.2 The aggregate trading amount for a Trading Participant for a trading interval equals the sum of:

“(a) The ex-ante energy trading amounts for each market trading node for which the Trading Participant is responsible calculated in accordance with clauses 3.13.7 and 3.13.8 (which will typically be positive for a Generation Company and negative for a Customer); plus

“(b) The ex-post energy trading amounts for each market trading node for which the Trading

Participant is responsible calculated in accordance with clauses 3.13.7 and 3.13.9 (which will typically be positive or negative for any Trading Participant); plus

“(c) The line rental trading amount corresponding to the quantity of bilateral contract of that Trading Participant calculated in accordance with clause 3.13.12; plus

“(d) The reserve trading amounts for each reserve region into which that Trading Participant contributes reserve calculated in accordance with clause 3.13.10 (which will always be positive for both Generation Companies mid Customers); plus

“(e) The transmission right trading amounts for each transmission right held by the WESM Participant calculated in accordance with clause 3.13.13 (which will always be positive for both Generation Companies and Customers); plus

“(f) The reserve cost recovery charge determined for that Trading Participant with respect to any reserve cost recovery zone within which it has any facility connected calculated in accordance with the procedures developed under clause 3.3.4 (which will be positive for any Trading Participant); and

“(g) Any other ancillary service cost recovery charges determined for that trading Participant in accordance with the procedures developed under clause 3.3.4.”

(10) Rule 3.15.2.2 (c) is hereby deleted.

(11) Rule 10.4.6.1 is amended to read as follows –

“When Customer Pricing Zones are adopted and prior to spot market commencement date, the Market Operator shall:”

(12) The definition of *Settlement Surplus* found in Chapter 11 – Glossary is amended to read as follows –

**“Settlement Surplus**– The settlement surplus remaining after all market transactions have been accounted for and is assumed to be attributable

to economic rentals arising from other binding constraints.”

(B) *Effectivity.* –

These amendments shall be effective on the fifteenth (15th) day following its publication in the *Official Gazette*.

**VINCENT S. PÉREZ, JR.**

**Secretary**

Manila, Philippines, 7 July 2004

## DEPARTMENT CIRCULAR NO. 2005-11-010

### ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

**WHEREAS**, Rule 8.6.1 of the Wholesale Electricity Spot Market (WESM) Rules provide for the approval by the Department of Energy (DOE) of proposals for any WESM rules changes upon endorsement by the PEM Board;

**WHEREAS**, on September 9, 2005, the Interim Rules Change Committee has approved a resolution endorsing for approval before the PEM Board changes in the WESM Rules pertaining to the governance, procedure on rules change, and market operations including correction of clerical errors;

**WHEREAS**, after discussion, the PEM Board has resolved on September 27, 2005 to approve for endorsement to the Department of Energy (DOE) the abovestated changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules:

A. Amendments to the WESM Rules

1. Rule 1.4.2.7 (d) is amended to read -

“(d) Has not been employed by any electric power industry participant, or a company or body related to or associated with a *WESM participant* (as defined in clause 1.4.2.7 (c) within one year prior to nomination date; and

2. Rule 1.6.2 (c) is hereby deleted and intentionally left blank.

3. Rule 1.9 is amended to read as follows -

“Where the *WESM Rules* identify matters that are subject to review or consultation in accordance with the public consultation procedures, the *PEM Board* shall ensure that, as a minimum, the following procedures are followed:

(a) The *PEM Board* shall publish in the market information website particulars of the matter to *WESM Participants* and other

interested persons, inviting written submissions concerning the matter to be made by a specified date.”

4. Rule 3.5.4.1 (as amended) is further amended to read -

Each *Customer* may submit a forecast in respect of each trading interval for each of its registered load facilities for each trading day of the week in accordance with the timetable. The forecast submitted by the *Customer* shall be used by the *Market Operator* in the preparation of *Net Load Forecast* if it is within the forecast tolerance range published by the *Market Operator*.

If the *Customer* fails to submit a forecast of its load facilities in accordance with the timetable or if the *Customer* forecast submitted is not within the published forecast tolerance range, the forecast prepared by the *Market Operator* at the node where the *Customer* is located shall be used.

Prior to the commencement of the spot market, the *Market Operator*, in consultation with *WESM Participants*, shall determine and publish the forecast tolerance range. The forecast tolerance range may be varied from time to time by the *Market Operator*.

5. Rule 3.6.5 is amended to read -

From time to time, the *System Operator* and the *Market Operator* shall investigate the scope for further development of the *market dispatch optimization model* beyond the minimum requirements specified in clause 3.6.1 and submit their recommendations in a report to the

*PEM Board* for consultation with *WESM Members*.

6. Rule 3.9.6 is amended to read -

If, as a result of *load shedding*, no *ex-ante prices* can be determined or communicated within the timeframe specified in the timetable, or the calculated prices are believed to be in error, the *Market Operator* shall, as soon as possible, issue a *pricing error notice* in accordance with clause 3.10.5.

7. Rule 3.10.5 is amended to read -

In the event where no *ex-ante prices* can be determined or communicated within the timeframe specified by the *timetable*, or the calculated prices are believed to be in error, as a result of *load shedding*, occurrence of *constraint violation coefficients*, or for any other reason:

- a) The *Market Operator* may, as soon as possible after the end of a *trading interval*, issue a *pricing error notice*, in which case, the *ex-post quantities* and the *ex-post prices* determined according to clause 3.10.7 shall also serve as *ex-ante quantities* and *ex-ante prices*.
- b) If no *pricing error notice* is issued within the time specified in the foregoing paragraph, the *ex-post prices* and quantities shall serve as *ex-ante prices* and quantities and shall stand irrespective of the outcome of any subsequent investigations or resolutions of any dispute.
- c) Should the pricing error also include *reserves*, the *reserve quantity* and price determined

in the *ex-post* run shall serve as the *reserve* quantity and prices.

8. Rule 3.10.6 is amended to read -

The *ex-post nodal energy price* for each *market trading node* shall be determined as the *shadow price* on the *energy balance equation* for that *market trading node*, formed in accordance with clause 3.6.1.4 (c), in an *ex-post dispatch optimization* performed, in accordance with the timetable, to determine target dispatch levels for the end of that trading interval assuming:

- a. The *plant* status at the end of that *trading interval* as determined for the *ex-post dispatch optimization* or if *load shedding* occurred in that *trading interval*, the *plant* status which would have pertained at the end of that *trading interval*, as indicated in the targets determined by the *ex-post dispatch* for that *trading interval*;
- b. The *generation offers* which applied at the beginning of that *trading interval*;
- c. The *unrestrained load* determined from *metering data*, or estimated, at the end of that trading interval, to apply at each *market network node* for that *trading interval*.

9. Rule 3.10.7 is amended to read -

The *Market Operator*, in consultation with *WESM participants* and subject to approval by the *PEM Board*, shall develop and publish procedures to be employed in clauses 3.10.6 (d) and (e) in establishing the network configuration and other constraints

to be assumed for the determination of *ex-post nodal energy prices* for circumstances in which power system conditions materially change during the *trading interval*, with a view to ensuring that:

- b) The *ex-post prices* produced in accordance with clause 3.10.6, properly and fairly represent conditions at the end of the *trading interval*.

10. Rule 3.13.1.1 is amended to read –

*Trading Participants* who sell electricity pursuant to *bilateral contracts* and wish those *bilateral contracts* to be accounted for in settlements shall, after each *trading day*, in accordance with the billing and settlements timetable:

- a) Submit a schedule to the *Market Operator* specifying the *MWH bilateral sell quantities* at each relevant *market trading node*, in each *trading interval* of that *trading day*;

11. Rule 3.13.6(a) is amended to read -

For each *trading interval*, the gross *ex-post energy settlement quantity* for each *market trading node* shall be determined by the *Market Operator* as follows:

- a) If the *market trading node* is defined under clause 3.2.2.1 as lying in the boundary of the *power system* operated by the *System Operator*, the *gross ex-post energy settlement quantity* for the *market trading node* is the net metered flow into the *power system* operated by the *System Operator* through the associated *meter*;

- b) If the *market trading node* is defined under clause 3.2.2.2 as a *generator node* lying on the interface between *networks*, apparatus or equipment operated by parties other than the *System Operator* the *gross ex-post energy settlement quantity* for the market trading node is the net metered flows through the associated *meter* from the *Generation Company* to the *Customer* side of the *meter*; and

12. Rule 3.13.7 is amended to read -

For settlement purposes, the ex-ante energy settlement quantity for any *market trading node* in any *trading interval* shall be determined by the *Market Operator* by adjusting the gross ex-ante energy settlement quantity for that *market trading node* and any *trading interval*, as measured in accordance with clause 3.13.5 or estimated in accordance with clause 3.13.6, for bilateral contract quantities notified to the *Market Operator* under clause 3.13.1.1, or inferred by the *Market Operator* under clause 3.13.1.1 and accepted as valid under clause 3.13.1.2 by:

13. Rule 3.13.16.1 is amended to read -

If the transactions required by clauses 3.13.14.2 (a), (b) and (d), in aggregate, result in a surplus or deficit remaining, this will be known as the *net settlement surplus*.

14. Rule 3.14.7 is amended to read -

After the *Market Operator* is to be paid under clause 3.14.6 and in accordance with the schedule set in

the billing and settlements timetable, the *Market Operator* shall pay to each *WESM Member* in cleared funds the settlement amount (if any) stated to be payable to that *WESM Member* in that *WESM Member's* final statement.

15. Rule 6.2.3 is amended to read -

During *market suspension* and *intervention*, the *Market Operator* shall impose an *administered price* to be used as basis for settlements.

Prior to the *spot market commencement date*, the *Market Operator* shall develop and publish the methodology for determining the *administered price* to be used during *market suspension* or *intervention* of the *spot market*. Said *administered price* is to be endorsed by the *PEM Board* for *ERC approval*.

16. Rule 6.5.1.1 (b) is amended to read -

The *System Operator* shall also:

1. Implement any *load shedding* in a manner consistent with the *system security and reliability guidelines*; and
2. To the extent possible, determine a rotating *outage* plan, and rotate any *load shedding* requirements.

17. Rule 7.3.1.1 (i) is amended to read

The dispute resolution procedures set out in this clause 7.3 apply to all disputes which may arise between any of the following:

as to:

- (i) A dispute under or in relation to the rules and regulations issued by the *ERC* and *DOE* under

the *Act*, where such rules and regulations provide that the dispute resolution procedures under the *WESM Rules* are to apply to any dispute under or in relation to that rules and regulations; or

18. Rule 8.2.2.2 is amended to read –

The principle applicable to the composition and operation of the *PEM Board* as set out in clause 1.4.2 apply also to the composition of the *Rule Change Committee*.

19. Rule 8.2.9 is added and will read -

a) Subject to clause 8.6.4.2, the *Rule Change Committee* will recommend for approval of the *PEM Board* a system of classification of changes to the *WESM Rules*.

b) Subject to approval by the *PEM Board*, the *Rule Change Committee* will develop and publish detailed guidelines and procedures to be employed in the consideration, approval, publication and effectivity of any proposed change to the *WESM Rules*. These guidelines and procedures will, as far as practicable, be consistent with the provisions of this chapter 8, provided, however, that the *Committee* may establish procedures, time periods and manner of publication and effectivity other than as stated in this chapter 8 depending on the classification of the proposed change.

20. Rule 8.5.4 is amended to read -

Approving and submitting proposed Rule change for approval

If the *PEM Board* concludes that the proposed change to the *WESM Rules* satisfies the criteria which are set out in clause 8.4.1 and that the processes and procedures set out in clause 8.4 have been duly followed, the *PEM Board*:

a) shall submit the proposed change to the *WESM Rules* to the *DOE* for approval if the proposed change requires approval by the *DOE* under the classification system approved pursuant to clause 8.6.4.2; or

b) shall cause publication of the approved rule change, if the proposed rule change requires approval of the *PEM Board* only. The approved rule change will become effective after its publication on such date and for such period as the *PEM Board* determines.

21. Rule 8.6 is amended to read -

Approval of Proposed Rule Changes by the *DOE*

22. Rule 8.6.4.1 is amended to read -

If the *DOE* concludes that a proposed change to the *WESM Rules* is consistent with the *Act* and the public interest and satisfies the criteria which are set out in clause 8.4.1, it shall approve the amendment and cause its publication. The change to the *WESM Rules* approved by the *DOE* will take effect within fifteen days from its publication, or on such later date as the *DOE*, determines.

23. Rule 8.6.4.2 is amended to read -

Upon recommendation of the *Rules Change Committee*, the *PEM Board* shall ratify the classification system of rule change proposals developed



by the Committee pursuant to clause 8.2.9 (a) that will delineate proposals requiring DOE review and approval vis-à-vis proposals that can be acted upon at the PEM Board level. This classification shall be approved by the DOE.

24. The definition of administered price under Rule 11 is amended to read -

Administered price. A price imposed by the Market Operator to the Trading Participants during *market suspension* and *intervention* to be used for settlements which price is determined in accordance with the methodology developed and published by the Market Operator and approved by the ERC.

25. The definition of Business Day under Rule 11 is amended to read -

Business day. Any day on which the spot market is open for business.

And the following clerical corrections:

1. Rule 3.8.1 is amended to read -

Prior to commencement of each trading interval, the *Market Operator* shall, in consultation with the Grid Operator, and in accordance with the *timetable*:

- b) Prepare a forecast of the *unrestrained net load* expected at each *market trading node* for the end of that *trading interval*;

2. Rule 3.8.2.2 (b) is amended to read -

*Load shedding* or other directions issued by the *System Operator* during the *trading interval*;

3. Rule 3.11.1.2 (a) is amended to read -

Final *dispatch* offers and when applicable, *reserve* offers;

4. Rule 3.11.1.2 (e) is amended to read -

The identification of the *Trading Participant* submitting the *dispatch* bid or *dispatch* offer

5. Rule 3.13.12 (a) is amended to read -

The *Market Operator* shall calculate the line rental trading amounts for each *transmission line* in the *market network model* as:

- (a) The expected flow of energy out of the *receiving node* of the *market network line* as determined by the *market dispatch optimization model* multiplied by the *ex-ante nodal energy settlement price* at that node; less

6. Rule 3.13.14.1 is amended to read -

For each *billing period*, the *Market Operator* shall determine the *settlement amount* for each *Trading Participant* as the sum of the aggregate trading amounts for the *trading intervals* in that billing period, determined in accordance with clause 3.13.14.2: plus

7. Rule 3.15.7.1 (a) is amended to read -

*Publish the suspension notice*; and

8. Rule 3.15.7.6 is amended to read -

- If: the trading of energy shall not be registered as a *Metering Services Provider* for any *connection point* in respect of which the *metering data* relates to its own use of *energy*.
- (b) The *Market Operator* has issued a *suspension notice* to a *WESM Member* due to a failure by the *WESM Member* to continue to satisfy the *prudential requirements* and in the *Market Operator's* reasonable opinion the *WESM Member* is incapable of rectifying that failure for any reason.

B. Effectivity

These amendments shall be effective fifteen (15) days following its publication in two (2) national newspapers of general circulation.

**RAPHAEL P. M. LOTILLA**  
Secretary

Metro Manila, Philippines,  
November 11, 2005

9. Rule 4.4.2 is amended to read -

Subject to clause 4.4.3, *Generation Company* or *Customer* which is involved in

**DEPARTMENT CIRCULAR NO. 2006-01-0001**

ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

**WHEREAS**, Rule 8.6.1 of the Wholesale Electricity Spot Market (WESM) Rules provide for the approval by the Department of Energy (DOE) of proposals for any WESM rules changes upon endorsement by the PEM Board;

**WHEREAS**, on November 8, 2005 and December 8, 2005, the Interim Rules Change Committee has approved a resolution endorsing for approval before the PEM Board changes in the WESM Rules pertaining to the governance and market operations;

**WHEREAS**, after discussion, the PEM Board has resolved on November 10, 2005 and December 15, 2005 to approve for endorsement to the Department of Energy (DOE) the abovestated changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules.

**A. Amendments to the WESM Rules**

1. Rule 1.4.2.7 (a) is amended to read –
  - (a) Is not a director, officer, employee, contractor, agent, manager, or shareholder of a *WESM Member*,
2. Rule 1.4.2.7 (b) is amended to read –
  - (b) Is not a relative of a person, within the fourth civil degree of consanguinity or affinity, of a director, officer, manager, shareholder of a *WESM Member*,

3. Rule 1.4.2.7 (c) is amended to read –

(c) Is not an officer, manager, director or shareholder, agent, employee or contractor of, or is not a person directly or indirectly, through one or more intermediaries, controls, is controlled by a company, affiliate or any other entity related to or associated with a WESM Member, where:

(1) A related company or body, is a parent, holding company subsidiary or affiliate of the WESM Member; and

(2) An associate is a person who is director, officer, manager or shareholder of that related company or entity, or a relative of such a person within the fourth civil degree of affinity or consanguinity;

4. Rule 1.4.2.7 (d) is amended to read –

(d) Has not been employed as an officer, or any supervisory or managerial capacity, by any electric power industry participant, or a company or body related to or associated with a WESM Member within one year prior to the nomination date; and

5. Rule 1.4.2.7 is added to read –

The term shareholder as used in this clause 1.4.2.7 (a), (b) and (c) shall be understood to exclude:

(a) a member of an Electric Cooperative who is not involved in the operation and management of the same Electric Cooperative; and

(b) an End-user who is required to subscribed to, or to purchase, a share in a Distribution Utility as an incident to the provision of service by the same Distribution Utility, provided that the interest of the End-user be not more than the minimum required to avail of the Distribution Utility's services.

6. Rule 1.4.6 is amended to read –

The *PEM Board* shall form working groups and appoint qualified personnel who shall act as the following:

(a) The *PEM Auditor* to conduct audits of the operation of the *spot market* and of the *Market Operator* in accordance with clause 1.5;

(b) A *Market Surveillance Committee* to monitor and report on activities in the *spot market* in accordance with clause 1.6;

(c) A *Technical Committee* to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code* in accordance with clause 1.7; [and]

(d) A *Rules Change Committee* to assist the *PEM Board* and the DOE in relation to the revision and amendment of the *WESM Rules* in accordance with chapter 8, and the formulation, revision and amendment of market manuals, procedures and guidelines; and

(e) A *Dispute Resolution Administrator* to facilitate

the mediation of the dispute between the parties to reach resolution within a specified period of time in accordance with the dispute resolution process under clause 7.3

7. Rule 1.4.7.1 is added to read –

The *PEM Board* shall establish a Market Assessment Group which shall have the following powers and functions:

- (a) Serve as the primary support unit of the PEM Committees;
- (b) Assist the *PEM Board* or the *Market Surveillance Committee* to establish the procedures for monitoring and assessing the performance of the *WESM* and the activities conducted by the *WESM Members* with the end view of ensuring the effective functioning or overall efficiency of the *WESM*;
- (c) Regularly collect and process market monitoring data and indices;
- (d) Prepare periodic assessment reports on overall market performance and competitiveness;
- (e) Provide support and assistance to the different PEM Committees formed in accordance with clause 1.4.6, when requested and in a manner as deemed necessary by the respective Committee Chairmen; and
- (f) Perform such other tasks as assigned by the PEM Board, the PEM Committees or the President of the *Philippine*

*Electricity Market Corporation.*

8. Rule 1.4.7.2 is added to read –

The Market Assessment Group shall be composed of an adequate number of personnel with the appropriate knowledge, experience and qualifications necessary to provide timely and effective support and assistance to the PEM Committees.

9. Rule 1.4.7.3 is added to read –

The Market Assessment Group shall be a unit under the Office of the President of the *PEMC*.

10. Rule 1.4.8 is added to read –

The *PEM Board* shall create an *Enforcement and Compliance Officer* to investigate alleged breaches of and enforce sanctions against the *System Operator, Market Operator, and other WESM Members*.

To assist the *Enforcement and Compliance Officer*, an Enforcement and Compliance Office shall be created to perform the following functions:

- a) Serve as a technical and investigative support unit of the *Enforcement and Compliance officer*;
- b) Establish a mechanism to promote consultation and voluntary compliance of industry participants; and,
- c) Continuously develop systems and procedures to deter breaches of the *WESM Rules* and further evolve enforcement of penalties consistent with the objectives of the *WESM*.

11. Rule 1.6.2 (d) is amended to read –
- (d) Assist the PEM Board or the *Enforcement and Compliance Officer* to investigate and gather evidence of:
- (1) Unusual or suspicious behavior or activities of WESM Members in the spot market;
  - (2) Suspected or alleged breaches of the WESM Rules by WESM Members; and,
  - (3) Suspected or alleged anti-competitive behavior.
12. Rule 3.2.2.1 is amended to read –
- A market trading node* is a designated point in the *market network model* where energy is bought or sold based on the schedules and prices determined by the *Market Dispatch Optimization Model*. A *market trading node* where energy is primarily sold into the WESM is referred to as the *generator node* while a *market trading node* where energy is primarily bought from the WESM is referred to as a *customer node*.
13. Rule 3.2.2.2 is amended to read –
- Each *market trading node* defined under clause 3.2.2.1 shall:
- (a) Be assigned to a *Trading Participant* that intends to buy or sell energy and is capable of complying with the *dispatch and settlement* requirements in the WESM;
  - (b) Be associated with a revenue metering and remote telemetering facilities capable of measuring all relevant incoming and outgoing energy deliveries for the purpose of *dispatch and settlement* in the WESM; and
  - (c) As much as possible, represent the connection point between the *Network Service Provider* and the *Trading Participant*.
14. Rule 3.2.2.3 is amended to read –
- If the connection point of the *Trading Participant* could not be represented in the *market network model* or if particular *market trading node* must be assigned to more than one *Trading Participant* because the conditions set in clause 3.2.2.2 are not met, the affected *Trading Participants*, the *Metering Services Provider* and the *Network Service provider* will mutually agree on adjustments that will be implemented by the *Market Operator* and the *System Operator*.
15. Rule 3.5.13.1 is amended to read –
- Subject to clause 3.5.13.3, the *System Operator* may recommend to the *Market Operator* that constraints be imposed on the *energy dispatch of a specific facility* which may have the effect of fixing or bounding the *generation or reserve scheduled* from the plant, if the *System Operator* reasonably believes that the *generator offer, reserve offer or demand bid* does not provide a valid representation of the actual or expected capability of that *facility* in that *trading interval*, and where, in the reasonable opinion of the *System operator*, such misrepresentation seems likely to impact materially on *dispatch or pricing*.
16. Rule 3.5.13.6 is amended to read –
- If a review conducted under clause 3.5.13.5 concludes that a *Trading Participant* or the *Market Operator*

or the System Operator has acted inappropriately, and has thereby imposed significant costs on other parties, the market surveillance committee may refer that matter to the *Enforcement and Compliance Officer* under clause 7.2 or require that Trading Participant or the Market Operator or the System Operator (as the case maybe) to pay compensation in accordance with clause 7.2.

17. Rule 3.6.1.4 (i) is amended to read –

Power flow equations, as defined by a DC approximation to an AC power flow within AC sub-systems, or equivalent mathematical representation;

18. Rule 3.10.2 is amended to read –

Determination of Ex-Ante Nodal Energy Price

The ex-ante nodal energy price for each *market trading node* in any *trading interval* shall, subject to clause 3.10.5 be determined as the *shadow price* on the *energy balance equation* or equivalent mathematical formulation for that market trading node formed in accordance with clause 3.6.1.4 (c), in the *dispatch optimization* performed for that *trading interval* in accordance with clause 3.8.1.

19. Rule 3.10.6 is amended to read –

Determination of the Ex-Post Nodal Energy Price

The *ex-post nodal* energy price for each *market trading node* shall be determined as the *shadow price* on the *energy balance equation* or equivalent mathematical formulation for that *market trading node*, formed in accordance with clause 3.6.1.4 (c),

in a *ex-post dispatch optimization* performed, in accordance with the *timetable*, to determine target *dispatch* levels for the end of that *trading interval*, assuming:

20. Rule 3.9 is amended to read –

Treatment of Load Shedding, Excess Generation and Reserve Violation

21. Rule 3.9.9 is added to read –

Management Procedures for Reserve Violation

22. Rule 3.9.9.1 is added to read –

Should either the dispatch optimization or any market projection indicate a violation of a reserve requirement, the Market Operator shall:

- (a) Promptly advise the System Operator that it may be necessary to reduce the level of the reserve requirement.
- (b) Reduce the reserve requirement by the minimum amount to a level that prevents a violation of that requirement.
- (c) Solve the market dispatch optimization model with the reduced reserve requirement.

23. Rule 3.9.9.2 is added to read –

The prices determined in clauses 3.10.2, 3.10.6 and 3.10.10 will be derived from the solution of the market dispatch optimization model provided for in clause 3.9.9.1 (c)

24. Rule 4.2. (a) is amended to read –

A *Customer* in respect of any *market trading node* that is assigned to it through which it purchases electricity from the *spot market*.

25. Rule 4.2 (b) is amended to read –

A *Generation Company* in respect of a *market trading node* that is assigned to it through which it sells electricity to the spot market; and

26. Rule 4.3.1.1 is amended to read –

Before a *Trading Participant* who is a *Direct WESM Member* will be permitted by the Market Operator to participate in the *spot market* in respect of a *market trading node*, the *Trading Participant* shall ensure that:

(a) Each of its assigned *market trading node* has a *metering installation*:

27. Rule 4.3.1.2 is amended to read –

The *Market Operator* may refuse to permit a *Trading Participant* who is a *Direct WESM Member* to participate in the *spot market* in respect of any assigned *market trading node* if the *metering installation* associated with that market trading node does not comply with the provisions of this chapter 4, the *Grid Code and Distribution Code*.

28. Rule 4.4.2 is amended to read –

A *Generation Company or Customer* which is involved in the trading of energy shall not be registered as a *Metering Services Provider* for any *market trading node* assigned to it.

29. Rule 4.5.2.1 is amended to read –

The *Metering Services Provider* shall ensure that the metering point is located as close as practicable to the *market trading node*.

30. Rule 4.5.2.2 is amended to read –

The *Trading Participant*, the *Network Service Provider* and the *Market Operator* shall use their best endeavors to agree to adjust the *metering data* to allow for physical losses between the actual *metering point* and the relevant *market trading node*.

31. Rule 4.8.3 is amended to read –

The only entities entitled to have either direct or remote access to *metering data* on a read only basis from the *metering database* or the *metering register* in relation to a *metering point* are:

(e) Any Customer with respect to the *metering data* in relation to the *metering point* registered to it.

32. Rule 7.1 is amended to read –

In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of the transactions and operations of the *WESM*, this chapter sets out:

(a) The responsibilities for ensuring that all *WESM Members* comply with the *WESM Rules*;

(b) The procedures on how the alleged breaches will be dealt with including:

(1) The correct party to whom notice of an alleged breach of the *WESM Rules* by a *WESM Member* shall be given;

(2) The manner in which an alleged breach is to be investigated;

- (3) The manner in which a breach is to be sanctioned; [and]
- (c) Other provisions on how disputes are to be resolved; and
- (d) The appointment of an *Enforcement and Compliance Officer*, a *Dispute Resolution Administrator* and *Dispute Resolution Panel*.
33. Rule 7.2.2. is amended to read –
- Breaches of the WESM Rules by WESM Members.
34. Rule 7.2.2.2 is amended to read –
- The PEM Board shall direct the *Enforcement and Compliance Officer* to investigate the alleged breach as soon as possible, when:
- (a) A WESM Member or the Market Operator notifies the PEM Board of an alleged breach of the WESM Rules in accordance with clause 7.2.2.1; or
- (b) The PEM Board has a reasonable ground to believe that the WESM Member has committed or is committing an act probably in violation of the WESM Rules; or
- (c) The Market Surveillance Committee submits a report showing suspected breaches of the WESM Rules by WESM Members.
35. Rule 7.2.2.3 is amended to read –
- The *Enforcement and Compliance Officer* shall issue a written notice to the *WESM Member* who is alleged to be in breach of the *WESM Rules* within five calendar days upon receipt of notice from the *PEM Board*.
36. Rule 7.2.2.4 is amended to read –
- The said notice issued by the *Enforcement and Compliance Officer* shall:
- (a) Specify the nature of the breach and the sanctions that may be imposed if the breach is not remedied;
- (b) Require the WESM Member to explain in writing the alleged breach within ten (10) calendar days from receipt thereof; and
- (c) Order of the WESM Member who is in alleged breach to immediately remedy the act or omission comprising the alleged breach or some other remedial measure. If in the opinion of the *Enforcement and Compliance Officer*, exercising due and necessary diligence, believes that some remedial or preventive measure should be taken to abate the effects of the act or omission complained of; Provided that (i) complying with the order shall not be deemed as an admission of guilt of the act or omission complained of, and (ii) shall be recognized as a mitigating factor if the complying party is later determined to be in breach.
37. Rule 7.2.2.5 is amended to read –
- The notice shall be copy furnished to:
- (a) The PEM Board: [and]
- (b) The ERC, and
- (c) The market operator within five business days from issuance of notice.



38. Rule 7.2.2.6 is amended to read –

The *Enforcement and Compliance Officer* after according the parties due process shall determine whether the *WESM Member* in question is in breach of the *WESM Rules*.

39. Rule 7.2.2.7 is amended to read –

If the *Enforcement and Compliance Officer* determines that a *WESM Member* has indeed breached a *WESM Rule*, the *Enforcement and Compliance Officer* shall require in writing the *WESM Member* to remedy the breach within a reasonable period of time: *Provided that* the period to remedy, as determined by the *Enforcement and Compliance Officer*, shall take in consideration all the attendant circumstances surrounding the breach including the nature and extent of damages or injuries caused as well as the quickest possible time required to correct the breach.

40. Rule 7.2.2.8. is amended to read –

The *Enforcement and Compliance officer* may further recommend to the PEM Board that the *WESM Member* determined to be in breach be suspended in accordance with clause 3.15.7 if the said member has:

- (a) Committed such a breach of the *WESM Rules* and that the breach cannot be rectified;
- (b) Continued to breach the *WESM Rules* over a period of time; or
- (c) Failed to remedy a breach after it has been required to do so.

The *Enforcement and Compliance Officer* may recommend to the PEM Board for approval the suspension of the party in breach in accordance with clause 3.15.7.

41. Rule 7.2.3.2 is amended to read –

If the *PEM Board* considers that the *Market Operator* or *System Operator* has committed a breach of the *WESM Rules*, the *PEM Board* shall direct the *Enforcement and Compliance Officer* to investigate the alleged breach as soon as possible.

42. Rule 7.2.3.3 is amended to read –

The *Enforcement and Compliance officer* shall issue a written notice to the *Market Operator* or the *System Operator* within five business days upon receipt of notice from the *PEM Board*.

43. Rule 7.2.3.4 is amended to read –

The notice which the *Enforcement and Compliance Officer* is required to issue under clause 7.2.3.3 shall:

- (a) Specify the nature of the breach and the sanctions which may be imposed if the breach is not remedied; and
- (b) Require the *Market Operator* or the *System Operator* to explain in writing the alleged breach within a reasonable period of time.

44. Rule 7.2.4.1 is amended to read –

The *Enforcement and Compliance Officer* may request from the *WESM Member* who is alleged to be in breach of the *WESM Rules* all information relating to the breach.

45. Rule 7.2.4.2 is amended to read –

If the *Enforcement and Compliance Officer* makes a request for information under clause 7.2.4.1, it shall provide to the *WESM Member* to whom the request is made the reasons for the request.

46. Rule 7.2.4.3 is amended to read –

If a WESM Member fails to comply with a directive or request by the *Enforcement and Compliance Officer* for information under clause 7.2.4.1, the *Enforcement and Compliance Officer* may request the Market Surveillance Committee to investigate the matter and to prepare a report or such other documentation as the *Enforcement and Compliance Officer* may determine.

47. Rule 7.2.7 is amended to read –

Subject to clause 5.3, the *Enforcement and Compliance Officer* shall *publish* a monthly report setting out a summary for the period covered by the report of all actions and rulings made during that period in relation to the enforcement of the *WESM Rules*.

48. Rule 7.2.8 is added to read –

Appointment of an Enforcement and Compliance Officer

49. Rule 7.2.8.1 is added to read –

The President of PEMC shall appoint a person to act as *Enforcement and Compliance Officer* with the concurrence of the *PEM Board*.

50. Rule 7.3.2.1 is amended to read –

The *PEM Board* shall appoint a person to act as the *Dispute Resolution Administrator*, who shall also be part of the *Dispute Resolution Group*.

51. Rule 7.3.2.5 is amended to read –

For the avoidance of doubt, the *dispute resolution group* selected under clause 7.3.2.4 may include any person the *Dispute Resolution Administrator* considers to have the same qualifications stated in clause 7.3.2.2.

52. Definition of Enforcement and Compliance Officer in Rule 11 is added to read –

Enforcement and Compliance Officer. A person tasked to perform compliance and enforcement functions pursuant to clause 7.2, including the investigation of alleged breach of the WESM Rules and imposition of appropriate sanctions and such other functions as may, from time to time, be assigned to him by PEMC.

53. Definition of the Philippine Electricity Market Corporation or PEMC in Rule 11 is added to read –

Philippine Electricity Market Corporation or PEMC. The corporation incorporated upon the initiative of the *DOE* composed of all *WESM Members* and whose Board of Directors will be the *PEM Board*.

54. Appendix A1.1 is amended to read

Generation Offers:

(c) May include up to ten (10) energy offer blocks per (aggregate) unit. The maximum combined capacity of *generation and reserve offers* must not be less than the maximum available capacity of the generator.

## **B. Effectivity**

These amendments shall be effective fifteen (15) days, following its publication in two (2) national newspapers of general circulation.

Metro Manila, Philippines. January 10, 2006

**RAPHAEL P. M. LOTILLA**

## DEPARTMENT CIRCULAR NO. 2006-05-0006

### ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

---

**WHEREAS**, Rule 8.6.1 of the Wholesale Electricity Spot Market (WESM) Rules provide for the approval by the Department of Energy (DOE) of proposals for any WESM rules changes upon endorsement by the PEM Board;

**WHEREAS**, on December 20, 2005, the Interim Rules Change Committee has approved a resolution endorsing for approval before the PEM Board changes in the WESM Rules pertaining to the provisions on the over-riding constraints and the determination of market prices;

**WHEREAS**, after discussion, the PEM Board has resolved on January 19, 2006 to approve for endorsement to the Department of Energy (DOE) the abovestated changes to the WESM Rules;

**NOW, THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules.

#### A. Amendments to the WESM Rules

1. Rule 3.5.13.1 is amended to read –

Subject to clause 3.5.13.3, the *System Operator* may require the *Market Operator* to impose constraints on the power flow, demand, energy generation of a specific facility in the Grid to address system security threat, to mitigate the effects of a system emergency, or to address the need to dispatch generating units to comply with systems, regulatory and commercial tests requirements. The *System Operator* may also relax existing constraints or system

requirements on power flows, demand, energy generation and reserves if the *Market Operator* is unable to produce a feasible dispatch schedule.

The *System Operator*, in consultation with the *Market Operator* and the *Trading Participants*, shall develop the criteria and procedures for dispatch of generating units that are required to run as a result of the imposition of relaxation of constraints stated in the preceding paragraph, and the manner for compensating said units.

2. Rule 3.5.13.2 is amended to read –

In situations where offers are structured in such a way that provision of any level of reserve services prohibits the simultaneous provision of very low or high levels of generation, the *System Operator* may also recommend to the *Market Operator* that constraints should be imposed or relaxed so as to allow generating systems to operate in a range which allows **increase of** either reserve **allocation** or **energy** generation, as appropriate, having regard to:

- (a) The commercial interests of Trading Participants; and
- (b) Market priorities and **objectives**, as reflected by the relevant market prices for energy and reserves in the relevant reserve region.

3. Rule 3.10.5 is amended to read –

In the event where no ex-ante prices can be determined or communicated within the timeframe specified by the timetable, or the calculated prices are believed to be in error, as a result of load shedding, occurrence of constraint violation coefficients, or for any other reason:

- a) The market Operator may, as soon as possible after the end of a trading interval, issue a pricing error notice, in which case, the ex-post quantities and the ex post prices determined according to clause 3.10.7 shall also serve as ex-ante quantities

and ex-ante prices. **If no ex-post prices can be determined the calculated prices are believed to be in error as a result or the imposition or relaxation of constraints pursuant to clause 3.5.13.1, the Market Operator shall re-run the Market Dispatch Optimization Model.**

#### B. Effectivity

These amendments shall be effective fifteen (15) days following its publication in two (2) national newspapers of general circulation.

**RAPHAEL P.M. LOTILLA**

Secretary

Metro Manila, Philippines, May 5, 2006

## DEPARTMENT CIRCULAR NO. 2006-07-0010

### ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

---

**WHEREAS**, Rule 8.6.1 of the Wholesale Electricity Spot Market Rules (WESM) Rules provide for the approval by the Department of Energy (DOE) of proposals for any changes in the WESM rules upon the endorsement by the Board of Directors of the Philippine Electricity Market Corporation (PEM Board);

**WHEREAS**, on April 20, 2006, May 16, 2006 and June 15, 2006, the Interim Rules Change Committee has approved a resolution endorsing for approval by the PEM Board certain changes in the WESM Rules concerning provisions on limiting the liability of the PEM Board, dispute resolution, billing and settlements and metering;

**WHEREAS**, after discussion, the PEM Board has resolved on June 6, 2006 and June 21, 2006 to approve for endorsement to the DOE the aforesaid changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules.

#### A. WESM Rules

1. Incorporation of Clause 1.4.9 to read –

**The members of the PEM Board are not liable for any loss or damage suffered or incurred by a Participant or any other person unless the PEM Board or any of its members, as the case may be, acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.**

2. Incorporation of Clause 1.4.10 to read –

**Notwithstanding clause 1.4.9, except for liability arising out of conduct involving malice, manifest partiality, bad faith, gross incompetence or gross negligence, if the PEM Board is or the members thereof are made liable to pay any amount for loss or damage suffered or incurred in the exercise of its functions under the WESM Rules and WESM Manuals, the PEM Board or the members thereof shall be indemnified for the full amount adjudged; and, for costs or expenses incurred by that person defending himself in the related proceedings.**

3. Clause 3.15.3 is amended to read –

The security provided by a *WESM Member* under this clause 3.15 shall be either:

- (a) A bank guarantee in a form and from a bank acceptable to the *Market Operator*, or
- (b) Another immediate, irrevocable and unconditional commitment in a form and from a bank or other institution acceptable to the *Market Operator*, or
- (c) Surety bond issued by a surety or insurance company duly accredited by the Office of the Insurance Commissioner of the Philippines; or
- (d) Such other forms of security or guarantee acceptable to the *Market Operator*.**

4. Clause 3.15.8.3 is amended to read –

The trading limit for a *WESM Member* at any time shall not be greater than 95% of the total value of the security provided by the *WESM Member* to

the *Market Operator* under clauses 3.15.3 (a), (b) and (c).

5. Clause 4.6.2.1 is amended to read

**The MSP that is contracted by the MTP for a particular metering point shall retrieve the metering data from the meter and transmit the data to the Market Operator for billing and settlement.**

However, the MSP shall not make, cause or allow any alteration to the original stored meter data as retrieved in the metering installation.

**At its option, the Market Operator may also directly retrieve the meter data.**

**The MSP with a Certificate of Authority from ERC and registered with MO must be capable of sending meter data in the required format of MO. An MSP must have its own Meter Data Retrieval System and compatible with the MO Meter Data Collection System.**

6. Clause 7.3.14 is amended to read –

Notwithstanding clause 7.3.13, except for liability arising from conduct involving malice, manifest **partiality**, bad faith, gross incompetence or gross negligence, if the Dispute Resolution Administrator, the dispute resolution panel or the members thereof are made liable to pay any amount for loss or damage x x

7. The definition of Billing Period under Chapter 11 is amended to read

Billing period. The period of one month commencing **at 00:00 hours**

of the twenty sixty (26<sup>th</sup>) day of each calendar month to 24:00 hours of the twenty-fifth (25<sup>th</sup>) day of the next calendar month.

## B. Separability Clause

If for any reason, any section or provision of this Department Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

## C. Effectivity

This Department Circular shall take effect immediately following its publication in two (2) newspapers of general circulation.

Energy Center, Fort Bonifacio, Taguig City, Metro Manila, July 20, 2006.

**RAPHAEL P.M. LOTILLA**  
Secretary

# DEPARTMENT CIRCULAR NO. 2006-11-0013

## ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

---

**WHEREAS**, Rule 8.6.10 of the Wholesale Electricity Spot Market Rules (WESM) Rules provide for the approval by the Department of Energy (DOE) of proposals for any changes in the WESM rules upon the endorsement of the Board of Directors of the Philippine Electricity Market Corporation (PEM Board);

**WHEREAS**, on June 29, 2006, July 18, 2006, and July 27, 2006, the Interim Rules Change Committee approved a resolution endorsing for approval by the PEM Board changes in the WESM Rules pertaining to the provisions on the powers of the PEM Board, design and promulgation of penalties, submission of bilateral contract data, payment to trading participants, and composition of the rule change committee;

**WHEREAS**, after discussion, the PEM Board resolved on August 9, 2006 and September 27, 2006 to approve for endorsement to the DOE the aforementioned changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules

### A. WESM Rules

1. Incorporation of Clause 1.4.5.2 (f) and (g) to read –

(f) Approve and promulgate Market Manuals, including amendments and revisions thereto; and

(g) Issue resolutions or advisories on any matter related to the WESM

2. Incorporation of Clause 1.6.3 to read –

1.6.3 Design and Promulgation of Penalties

The Market Surveillance Committee (MSC) will design and promulgate the penalty levels and the appropriate range of penalties, for breaches and non-compliance of WESM Rules, anti-competitive behavior, and abuse of market power.

The MSC will conduct consultations with the Rules Change Committee

and the PEM Board in its formulation of the penalty levels and appropriate range of penalties.

The penalty scheme and any changes made by the MSC will be published in the Market Information Website and a copy furnished to the PEM Board and the Rules Change Committee. The MSC shall specify the date when the penalties become effective, which shall in no case be earlier than the date of its publication.

The penalty scheme will be reviewed by the MSC annually.

The amount of the financial penalty shall be determined in consideration of:

1. the circumstances in which the Breach occurred;
2. the severity of the Breach;
3. the duration of the Breach and the rate of recurrence;
4. the extent to which the Breach was caused by inadvertence, negligence, or its deliberateness;
5. the actions of the party upon becoming aware of the Breach;
6. whether the party disclosed the matter to the MSC or ECO on its own accord or only when prompted to do so;
7. whether the party complied with all preventive actions or remedial measures prescribed by the ECO;
8. any benefit that the party obtained or expected to obtain as a result of the Breach;
9. the impact of the Breach on other WESM members and the

WESM as a whole; and

**10. other factors as the ECO or PEM Board considers appropriate.**

3. Clause 3.13.1.1 (b) is further amended to read –

(b) Identify the counter party to the bilateral contract and the party that will pay the line rental trading amount associated with the bilateral contract quantity submitted: **provided, however, that in case only one of the bilateral counter parties is registered as a *Direct WESM Member*, that *WESM Member* shall be the party that will pay the line rental to the *Market Operator*; and**

4. Clause 3.14.7 is further amended to read –

After the *Market Operator* is to be paid under clause 3.14.6 and in accordance with the schedule set in the billing and settlements timetable, the *Market Operator* shall pay to each *WESM Member* in cleared funds the *settlement amount* (if any) stated to be payable in that *WESM Member's final statement*.

**The maximum total payment which the *Market Operator* is required to pay in respect of any billing period is equal to the aggregate of –**

- a. the total payments actually received from *WESM Members* in accordance with Clause 3. 14. 6; plus
- b. the total amount that the *Market Operator* is able to actually draw from the prudential security of the defaulting *WESM Members* in accordance with clause 3.15 if one or more *WESM Member* is in default; plus

- c. other sources of funds which the PEM Board may approve to be paid to the WESM Members if the total amount drawn from the prudential security deposit of the defaulting WESM Members is insufficient to cover the defaulted amounts.

If it becomes necessary for the Market Operator to draw upon the prudential security of a defaulting WESM Member in accordance with clause 3.15, the corresponding payments to the WESM Members entitled to be paid shall be made only after the Market Operator is actually able to draw on the prudential security but not later than the date specified in the billing and settlement time table.

If the total payments actually received or drawn from the prudential security by the Market Operator for a particular billing period is insufficient to pay for the total amounts payable to the WESM Members, the total payments received and drawn shall be distributed and paid to the relevant WESM Members in proportion to the amount payable to them for that billing period.

The shortfall shall be paid upon collection from the defaulting WESM Member but not later than the date specified in the billing and settlement time table.

5. Clause 8.2.3 is amended to read –

Each member of the Rule Change Committee shall:

- a) Be appointed by the PEM Board in consultation with industry participants; and
- b) For the sectoral member or other groups, not be a member of the PEM Board.

6. Clause 8.2.4 is amended to read –

The PEM board may terminate the appointment of any person appointed to the Rule Change Committee at any time if:

xxx

- (c) The person ceases to represent the sectoral group or other groups, or the company to which he has been appointed; or

7. The definition of Market Manual under Chapter 11 is incorporated to read –

Market Manuals. A manual of specific procedures, systems or protocols for the implementation of the WESM Rules.

## B. Separability Clause

If for any reason, any section or provision of this Department Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

## C. Effectivity

This Department Circular shall take effect immediately following its publication in two(2), newspapers of general circulation.

Energy Center, Fort Bonifacio, Taguig City,  
Metro Manila, 09 November 2006

**RAPHAEL P.M. LOTILLA**  
(Sgd.) RAPHAEL P. M. LOTILLA  
Secretary



## DEPARTMENT CIRCULAR NO. 2010-03-0004

### ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

---

**WHEREAS**, Rule 8.6 of the Wholesale Electricity Spot Market (WESM) Rules provides for the approval by the Department of Energy (DOE) of proposals for any WESM Rules changes upon endorsement by the PEM Board;

**WHEREAS**, on 24 September 2008, 8 and 14 October 2008, the Interim Rules Change Committee (IRCC) approved for submission to the PEM Board changes in the WESM Rules to address market issues in the WESM identified by the Special WESM Rules Review Committee;

**WHEREAS**, after discussion, the PEM Board resolved on 13 January 2009 to approve for endorsement to the DOE the above stated changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules.

#### A. Amendments to the WESM Rules

1. Clause 1.3.2.3 is amended to read –

**1.3.2.3. The PEM Board shall develop performance standards** which monitor and provide an indication of, the Market Operator's performance with respect to:

- [a] The Market Operator's responsibilities under the Act, its Implementing Rules and Regulations (IRR), the WESM Rules, the Philippine Grid Code (the Grid Code) and all other applicable laws, rules and regulations;

- [b] The achievement of the objectives of the Act and WESM; and

- [c] The standards by which the Market Operator has been selected in accordance with terms of reference and/or the contract, of its selection as an Independent Market Operator.

Every year, the PEM Board shall publish a Market Operator Performance Report in accordance with herein clause.

The Market Operator's performance standards shall be reviewed and approved by the DOE.

2. Clause 1.5.1 is amended to read –

#### **1.5.1 Appointment of the PEM Auditor**

**12.5.1.1 The PEM Board shall appoint a PEM Auditor with such skills and expertise, and on such terms and conditions, as the PEM Board reasonably deems to be appropriate, taking into consideration the nature of the obligations and functions of the PEM Auditor, as set out in clause 1.5.2 and clause 5.2.6.**

**1.5.1.2 The PEM Auditor shall not currently or has not been employed within one year prior to the nomination date by any Philippine electric power industry participants.**

**1.5.1.3 The PEM Auditor must have sufficient relevant experience in one or more of the following fields:**

- (a) **Power industry;**
- (b) **Economics;**
- (c) **Risk management;**
- (d) **Information technology and information systems; and/or**
- (e) **In such other fields as may be relevant to and required in the performance of audits.**

3. Clause 1.5.2 is amended to read –

**1.5.2. Responsibilities of the Auditor**

x x x

4. Clause 1.5.3 is added to read –

**1.5.3 Review of WESM Rules**

x x x

5. Clause 3.6.2.4 is added to read –

**3.6.2.4 The Market Operator, in coordination with the System Operator, and in consultation with the WESM Members shall regularly review the appropriateness and applicability of constraint violation coefficients levels in accordance with clause 10.4.11.1; and revise as may be necessary to ensure that it reflects the actual conditions of the network. Such revisions shall be approved by the PEM Board and shall be published in accordance with the timetable.**

6. Clause 3.10.5 is amended to add –

3.10.5 x x x

a) x x x

**The Market Operator shall develop and publish the procedures for the**

**determination of the market re-run prices. Such procedures shall provide the criteria and conditions for the market re-run and the timetable for implementation.**

7. Clause 3.13.1.1 (c ) is amended to read –

(a) x x x

(b) x x x

(c) Provide evidence that the counterparty to the bilateral contract agrees with the submission made under this clause 3.13.1.1. **Such evidence shall be attached to the submission of schedule in 3.13.1.1 (a).**

8. Clause 5.2.6 is amended to read –

5.2.6.1 The **PEM Auditor** shall arrange for a spot market audit to be performed once each quarter, or such other period as determined by the PEM Auditor.

5.2.6.2 x x x

**5.2.6.3 The PEM Auditor may engage, subject to the PEM Board approval, the services of a qualified third party Auditor as outlined in clause 1.5.2 and clause 5.2.6.2. The selection of third party Auditors shall be approved by the PEM Board.**

**5.2.6.4 The PEM Auditor shall prepare a report on the results of the spot market audit.** The said report shall be made available to the DOE, the ERC, the PEM Board and WESM members.

9. Clause 5.3.7 is added to read –

**5.3.7. Timetable**

**The Market Operator shall develop the timetable for the publication of market information in accordance with Chapter 5 of the WESM Rules.**

10. Clause 8.6.4.2 is amended to read –

8.6.4.2 Upon recommendation of the Rules Change Committee, the PEM Board shall ratify the classification system of rule change proposals developed by the Committee pursuant to clause 8.2.9 that will delineate proposals **that can be implemented upon PEM Board's approval and proposals that will require DOE's approval prior to implementation.**

All WESM Rules changes implemented prior to DOE's approval shall be processed and submitted to the DOE for approval; otherwise, the effectivity of such WESM Rules changes shall be no more than six (6) months.

**Every year, such classifications shall be reviewed and amended, if necessary.**

This classification shall be approved by the DOE.

#### **B. Separability Clause**

Should any provision of this Department Circular be declared invalid or unconstitutional, the other provisions, so far as they are separable, shall remain in force.

#### **C. Effectivity**

This Department Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

Signed this 21<sup>st</sup> day of March 2010 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

**ANGELO T. REYES**  
Secretary

## **DEPARTMENT CIRCULAR NO. 2010-07-0008**

### **ADOPTING FURTHER AMENDMENTS TO THE WESM RULES**

**WHEREAS**, Rule 8.6.10 of the Wholesale Electricity Spot Market (WESM) Rules provides for the approval by the Department of Energy (DOE) of proposals for any WESM rules changes upon the endorsement by the PEM Board;

**WHEREAS**, on 7 April 2010, the Rules Change Committee (RCC) has approved a resolution endorsing for approval before the PEM Board proposed changes in the WESM Rules pertaining to the Designation of a Compliance Officer for WESM Members, Market Operator and System Operator;

**WHEREAS**, after discussion, the PEM Board has resolved on 24 June 2010 to approve for endorsement to the Department of Energy (DOE) the abovestated changes to the WESM Rules;

**NOW THEREFORE**, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts, and promulgates the following amendments to the WESM Rules:

#### **A. Amendments to the WESM Rules.**

Clause 7.2.9 is added to read as:

**7.2.9 Designation of a Compliance Officer for WESM Member,**

Market Operator and System Operator.

7.2.9.1 Each WESM Member, the Market Operator, the System Operator, Metering Service Provider and any other WESM Service Provides shall designate a Compliance Officer in their respective organizations.

7.2.9.2 The Compliance Officer shall:

- a) Monitor and undertake necessary activities to ensure the full compliance of their respective organization to the EPIRA, the EPIRA Implementing Rules and Regulations, WESM Rules, and the WESM Market Manuals; and develop necessary procedures and guidelines for this purpose.
- b) From time to time, if the Compliance Officer deems it necessary or appropriate, propose policies or amendments to the WESM Rules and/or WESM Market Manuals to enhance or develop the WESM enforcement and compliance, with

the objective of promoting good commercial and technical practices.

- c) Be responsible in facilitating and coordinating with the WESM Enforcement Compliance Office (ECO), all matters relating to the enforcement and compliance of their respective organization, including the provision of the necessary information and data, as may be required by any of the WESM Governance Committees and by the ECO.
- d) Submit a report to the ECO concerning their respective organization's compliance with WESM Rules and WESM Market Manuals on an annual basis or as may be determined by the ECO or any of the WESM Governance Committees.

**B. Separability Clause**

If for any reason, any section or provision of this Department Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

### C. Effectivity

This Department Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

Signed this 30<sup>th</sup> day of June 2010 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

**JOSE C. IBAZETA**  
Acting Secretary

## DEPARTMENT CIRCULAR NO. 2005–11–008

CALLING ON ALL ELECTRIC INDUSTRY PARTICIPANTS TO PARTICIPATE IN THE LIMITED LIVE DISPATCH OPERATIONS OF THE WHOLESALE ELECTRICITY SPOT MARKET

---

**WHEREAS**, Section 30 of Republic Act No. 9136. Otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, enjoined the Department of Energy (DOE) to establish the Wholesale Electricity Spot Market (WESM) that would facilitate a transparent, competitive and reliable market for electricity;

**WHEREAS**, significant progress has been made towards the commencement of WESM commercial operation and, at this final phase of the Trial Operation Program (TOP) for Luzon, the WESM is now ready to conduct a limited Live Dispatch Operations to test the implementation of the Security-Constrained Dispatch Schedule (SCED) produced by the market dispatch optimization model in the Market Management System (MMS);

**WHEREAS**, for the effective undertaking of this final phase of the TOP for Luzon and to assist the Philippine Electricity Market Corporation (PEMC), currently chaired by the DOE, in putting in place all the necessary components for the successful implementation of the WESM, there is a need for the active participation of the National Transmission Corporation (TransCo) as the System Operator together with other industry participants;

**WHEREAS**, in order to meet the target date of WESM’s commercial operations in January 2006 and in accordance with the schedule approved by the PEM Board, the Live Dispatch Operations will be conducted within the period of 15 November to 15 December 2005, with actual schedules to be provided by PEMC to all industry participants from time to time;

**NOW, THEREFORE**, premises considered, the DOE hereby calls on all industry participants, especially the TOP participants, to actively participate in the WESM Live Dispatch Operations and cooperate with the PEMC on the implementation and dispatch schedule, parameters and terms, with the end in view of bringing about WESM commercial operations in Luzon in January 2006.

This Department Circular shall take effect immediately and shall remain in effect until otherwise revoked.

Fort Bonifacio, Taguig, Metro Manila.  
11 November 2005

**RAPHAEL P. M. LOTILLA**  
Secretary

## DEPARTMENT CIRCULAR NO. 2005-11-009

CREATION OF A TASK FORCE TO COORDINATE EFFORTS IN RELATION TO THE WESM COMMERCIAL OPERATION AND DIRECTING ALL ELECTRIC INDUSTRY STAKEHOLDERS TO ACCOMPLISH THE SELF-ASSESSMENT AND CERTIFICATION FOR READINESS TO PARTICIPATE IN THE WESM

---

**WHEREAS**, Section 30 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Act of 2001” or “EPIRA” enjoined the Department of Energy (DOE) to establish the Wholesale Electricity Spot Market (WESM) that would facilitate a transparent, competitive and reliable market for electricity;

**WHEREAS**, pursuant to the said mandate, the DOE constituted, among others, the WESM Steering Committee on 31 May 2004, through Department Order No. 2004-06-007, to monitor the timeline, action plans and the overall target implementation of the WESM, and ensure the effective coordination of various activities amongst the government agencies or functional units, industry participants and such other entities involved in the WESM;

**WHEREAS**, significant progress has been made towards the commencement of WESM commercial operation and the fundamental components of the market are expected to be completed or finalized, including: the Market Management System (MMS), formation of the respective committees, the processing of its filing with the Energy Regulatory Commission (ERC) for the approval of the Price Determination Methodology;

**WHEREAS**, considering this progress made and to assist the Philippine Electricity Market Corporation (PEMC), currently chaired by the DOE, in putting in place all the necessary components for the successful implementation of the WESM and in the interest of a transparent and level playing field for all industry participants, there is

a need for a direct feedback mechanism to assess the overall readiness of various industry participants as would enable them to participate in the market as well as allow future market participants and service providers to assess and certify their own readiness to participate after WESM commences commercial operation;

**NOW, THEREFORE**, premises considered, the DOE hereby constitutes the Task Force on WESM Commercial Operation Readiness (TF-COR) and directs all industry participants to accomplish the initial self-assessment and certification forms in accordance with this Department Circular.

**SECTION 1. *Creation of the TASK FORCE on WESM COMMERCIAL OPERATION READINESS (TF-COR).*** To facilitate the regular monitoring and institute a feedback mechanism amongst responsible parties to facilitate the commercial operation of the WESM, a task force is hereby created to coordinate and report to the WESM Steering Committee issues or recommendation affecting the readiness of individual participants/their respective sectors for the commencement of WESM commercial operation.

**SEC. 1.1. *Composition of the Task Force.*** The TF-COR shall be composed of one representative and one alternate representative from each of the following agencies/entities:

Chairman:	Department of Energy
Co-Chairman:	Philippine Electricity Market Corporation-Market Operator (PEMC)

Members:	National Transmission Corporation (TransCo)
	Power Sector Assets and Liabilities Management Corporation (PSALM)
	National Power Corporation (NPC)
	National Electrification Administration (NEA)
	PEPOA
	PHILRECA
	MERALCO
	PIPPA

SEC. 1.2 **Functions of the Task Force.** The TF-COR shall exercise the following functions:

- (a) Provide regular updates every two (2) weeks to the WESM Steering Committee on the progress and status of the industry participants' respective readiness for the commercial operation of the WESM;
- (b) Coordinate efforts amongst industry participants and their respective sectors, convene and organize meetings for this purpose and implement a regular, efficient and direct feedback mechanism amongst responsible parties;
- (c) Facilitate mutual cooperation and sharing of information amongst the individual participants and provide the DOE necessary access to information on matters relevant to the determination of the basis for the declaration of the commencement of WESM commercial operation;
- (d) Identify issues in relation to the preparation of the industry for WESM commercial operation and provide recommendations for DOE Secretary's consideration towards the resolution of these issues;
- (e) Perform such other functions as may be necessary and delegated to it by the DOE for the successful to commencement of WESM commercial operation.

SEC. 1.3 **Responsibilities of Each Functional Unit.** In addition to the respective

responsibilities that may be assigned to each member of the TF-COR, each agency/entity shall provide, subject to availability and internal approval processes, the necessary personnel and resources to lend administrative support to the TF-COR as may be necessary.

SEC. 1.4 **Meetings.** The TF-COR shall meet twice a month or more often at such other time as the DOE directs in order to assess the status of each sector's readiness. Within 15 calendar days from the effectivity of this Department Circular, each member of the TF-COR shall submit the list of its representative/alternate representative to the DOE. Within 10 calendar days thereafter, the DOE shall convene the first meeting of the TF-COR.

SEC. 2 **Categories of WESM Participants.** The following are the parties required to conduct their respective readiness assessment.

- (1) Generation Companies;
- (2) Network Service Providers –
  - (a) Electric Cooperatives;
  - (b) Distribution Utilities;
- (3) Distribution Utilities;
- (4) Customers;
- (5) Philippine Electricity Market Corporation;
- (6) National Transmission Corporation as –
  - (a) System Operator;
  - (b) Metering Service Provider;
  - (c) Grid Operator; and
- (7) Suppliers/Aggregators

SEC. 3. **Compliance.** All industry participants are each required to submit their respective initial self-assessment to the DOE, as chair of the TF-COR, within 10 calendar days from the effectivity of this Circular. Every two weeks thereafter, unless the TF-COR provide

otherwise, all industry participants shall submit to the TF-COR an update on their initial assessments, indicating any problem and/or actions taken thereon.

SEC. 5. **Readiness of ECs.** In the case of Electric Cooperatives (ECs), the National Electrification Administration (NEA), as member of the TF-COR, must henceforth assume primary responsibility to monitor the readiness of ECs and provide training programs and other necessary activities to encourage the ECs' effective participation in the WESM. Towards this end, the NEA shall be primarily responsible for the preparation and submission by the ECs of the regular updates provided in Section 3 and NEA shall also provide the TF-COR with its recommendations and/or actions taken to address any problem indicated by the ECs in their updated assessments.

SEC. 6. **Confidentiality.** Any confidential information obtained by the TF-COR in the course of its review/assessment shall be

maintained in full confidentiality and will be used solely for the purposes expressed in this Department Circular.

SEC. 7. **No amendment or repeal of existing laws.** Nothing in this Department Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract. However, to the extent necessary, previous issuances by this Department in relation to the subject matter herein shall be deemed amended accordingly.

This Department Circular shall take effect immediately after its publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Fort Bonifacio, Taguig, Metro Manila, 11 November 2005.

**RAPHAEL P.M. LOTILLA**

## DEPARTMENT CIRCULAR NO. 2006-06-0009

DESIGNATING THE NATIONAL POWER CORPORATION AND THE POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION AS THE DEFAULT WHOLESALE SUPPLIERS FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM)

---

**WHEREAS**, the Department of Energy (the "DOE") is mandated under Section 30 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or "EPIRA", to establish the Wholesale Electricity Spot Market (the "WESM") that would facilitate a transparent, competitive and reliable market for electricity;

**WHEREAS**, pursuant to its mandate, the DOE, jointly with the electric power industry participants, is tasked to formulate the detailed rules for the WESM, and to organize

the autonomous market group operator (the "AGMO");

**WHEREAS**, on 28 June 2002, the DOE, upon the joint endorsement of the electric industry participants, promulgated the Wholesale Electricity Spot Market Rules (the "WESM Rules" through DEPARTMENT CIRCULAR NO.2002-06-003;

**WHEREAS**, on 18 November 2003, on the initiative of the DOE, the Philippine Electricity Market Corporation (the "PEMC"), was



incorporated as a non-profit, non-stock corporation with membership comprising of an equitable representation of electricity industry participants and chaired by the DOE, to be the AGMO as well as governing arm of the WESM;

**WHEREAS**, the PEMC, as the AGMO, has been tasked to undertake the preparatory work for the establishment of the WESM as well as the initial operations of the WESM;

**WHEREAS**, the EPIRA envisions that there shall be central dispatch of all generation facilities connected, directly or indirectly, to the transmission system, and such central dispatch is to be implemented by the National Transmission Corporation in accordance with the dispatch schedule submitted by the Market Operator of the WESM, as provided for in Section 9 in relation to Section 30 of the EPIRA;

**WHEREAS**, Section 30 of the EPIRA mandates the DOE, jointly with the industry participants, to formulate the detailed rules of the WESM, which shall include, among other matters, the procedures for establishing the merit order dispatch instructions for each time period;

**WHEREAS**, consistent with the legal mandate to implement central dispatch, the WESM Rules implement a gross pool market whereby all energy transactions are scheduled through the market by the Market Operator and, for this purpose, all persons or entities that inject or withdraw electricity into the national grid must become members of the WESM;

**WHEREAS**, trading in the WESM requires compliance with certain technical and commercial requirements including the requirements for creditworthiness or prudential requirements, communication facilities to facilitate the exchange of information between the Market Operator and the trading participant, revenue metering facilities to enable measurement of energy withdrawn or injected into the grid, and

remote telemetering facilities to enable real time monitoring of their demand, connection and generation status.

**WHEREAS**, at the start of the WESM not all electric industry participants would be able to meet these technical and commercial requirements, and, as such, would not be able to meet the qualifications to trade directly in the WESM;

**WHEREAS**, the WESM Rules allow qualified entities to become indirect WESM members and to trade in the WESM through direct WESM members;

**WHEREAS**, the entities eligible to become customers in the WESM but which may not be able to meet the qualifications for WESM membership are distribution utilities and other entities directly connected to the national grid which are currently being supplied electricity by the National Power Corporation (the “NPC”) and that their bilateral power supply contracts will not be superseded by the implementation of the WESM;

**WHEREAS**, the NPC and the Power Sector Assets and Liabilities Management Corporation (the “PSALM”) have separately registered to become direct WESM members and will allocate between themselves the bilateral power supply contracts of NPC;

**NOW THEREFORE**, premises considered the DOE hereby declares –

**Section 1. Default Wholesale Supply, Definition.** Default wholesale supply in the WESM refers to the supply of electricity to cover the supply imbalances (the “supply” imbalances”) of customers in the WESM. Supply imbalances may either be contractual or schedule imbalances.

Section 1.01. Contractual imbalances refer to the difference between the quantity of electricity covered by the bilateral power

supply contract/s of a customer and its actual metered quantity.

Section 1.02. Schedule imbalances occur in cases where the customer has fully contracted for its requirements but its actual metered withdrawal of electricity is greater or lesser than its contracted quantity. The difference is the schedule imbalance.

**Section 2. Coverage.** The default wholesale supply arrangement will apply to the following customers in the Luzon and the Visayas grid –

Section 2.01. Distribution utilities, including electric cooperatives, private distribution utilities, and local government utilities; and

Section 2.02. End users of electricity, other than distribution utilities, which have been permitted by the NPC or such other competent government agency to connect directly to the national grid.

**Section 3. Period of Effectivity.** The default wholesale supply arrangement shall be implemented for a period not longer than one (1) year from the start of commercial operations of the WESM in Luzon for Luzon customers and from the start of commercial operations of the WESM in Visayas for Visayas customers.

**Section 4. Designation of the WESM Default Wholesale Supplier.** As an interim measure to ensure the smooth transition from the current supply arrangements to the implementation of the WESM, the NPC and

the PSALM shall be designated as the default wholesale suppliers upon commencement of WESM commercial operations.

This designation shall not preclude the subsequent designation of other default wholesale suppliers.

**Section 5. Guidelines and Procedure.** The NPC, PSALM and PEMC are hereby directed to develop pertinent arrangements and procedures to carry out the default wholesale supply arrangement consistent with applicable laws, rules and regulations.

**Section 6. No amendment or repeal of existing laws..** Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

**Section 7. Effectivity and Publication.** This Circular shall be effective immediately upon its publication in a newspaper of general circulation. The PEMC is hereby directed to publish this Circular in the Market Information website.

This Circular shall remain in effect until otherwise revoked.

Taguig, Metro Manila, 22 June 2006.

**RAPHAEL P.M. LOTILLA**  
Secretary

## DEPARTMENT CIRCULAR NO. 2010-05-0006

### TERMINATING THE DEFAULT WHOLESALE SUPPLIER ARRANGEMENT FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND DECLARING A DISCONNECTION POLICY

---

**WHEREAS**, the Department of Energy (the “DOE”) is mandated under Section 30 of Republic Act. No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, to establish the Wholesale Electricity Spot Market (WESM) that will facilitate a transparent, competitive, and reliable electricity market in the country;

**WHEREAS**, on 21 June 2006, the DOE issued Department Circular NO. 2006-06-008 declaring the launching of the WESM in the Luzon Grid and the terms and conditions for the commencement of the full commercial operations of the WESM;

**WHEREAS**, at the start of the commercial operation of WESM, not all electric industry participants, particularly the Distribution Utilities (DUs), were able to meet the technical and commercial requirements to directly trade in the WESM;

**WHEREAS**, on 22 June 2006, the DOE issued Department Circular NO.2006-06-0009 designating the National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) as the Default Wholesale Suppliers (DWS) to supply the electric power supply imbalances of customers in the WESM;

**WHEREAS**, Section 3 of Department Circular NO.2006-06-0009 states that the DWS Arrangement shall be implemented for a period not longer than one (1) year from the start of commercial operations of the WESM in Luzon;

**WHEREAS**, Section 4 of Department Circular NO.2006-06-0009 states that the designation

of NPC and PSALM as the DWS is an interim measure to ensure the smooth transition from the current supply arrangements to the implementation of the WESM;

**WHEREAS**, commercial operations of the WESM commenced on 26 June 2006;

**WHEREAS**, as of 28 April 2010, PSALM has successfully bid out an aggregate rated capacity of 3,318.23 MW with which accounts for the 87.82% of the total 3,778.23 MW rated capacity of PSALM/NPC owned generating assets in the Luzon and Visayas grids; also, PSALM has bid out 68.22% or 3,345.75 MW of the total 4,904.55 MW capacity of NPC-IPP contracts in the Luzon and Visayas grids;

**WHEREAS**, the privatization of the significant portion of NPC generating plants and other power assets of PSALM, since the effectivity of the DWS, has significantly affected the ability of PSALM and NPC to supply the energy requirements of its customers;

**WHEREAS**, there is a need to terminate the DWS since NPC and PSALM can no longer economically and effectively perform their duties as the default wholesale supplier;

**WHEREAS**, the termination of the DWS arrangement will cause distribution utilities (DUs) to have no default supplier of electricity for the imbalances of their contract and shall likewise leave them without any supplier, in case they fail to enter into a supply contract with a generator or other service providers;

**WHEREAS**, to ensure continuous supply of electricity within its franchise area, a DU is encouraged to enter into a bilateral contract

with a generator or other service provider, in a least cost manner, to cover its energy requirements;

**WHEREAS**, DUs can withdraw electricity from the grid, provided they are WESM Members, either as a Direct or Indirect, pursuant to WESM Rules Section 2.2.4.2, which states that “no person or entity shall be allowed to inject or withdraw electricity from the grid unless that person or entity is a registered member of the WESM”;

**WHEREAS**, it therefore necessarily follows that DUs who are not WESM members do not have the right to withdraw electricity from the grid and should therefore be disconnected from the grid;

**WHEREAS**, the Open Access and Transmission Services (OATS) Rules provides that the Transmission Provider shall not be held liable for failure to deliver the services described in Modules B C, and D of the OATS Rules in case the Transmission Customer fails to comply with its obligations under the OATS Rules, the Grid Code, and the WESM Rules;

**NOW THEREFORE**, premises considered the DOE hereby declares the following:

**Section 1. Termination of the DWS Arrangement.** In view of the inability of NPC and PSALM to economically and effectively perform their duties as DWS considering the privatization level to-date, the DWS arrangement provided in DOE Circular No. 2006-06-009 is hereby terminated. Accordingly, NPC and PSALM are thereby relieved from their designation as the DWS. All other rules, resolutions, or circulars issued in relation to the DWS are hereby declared repealed.

In accordance with Section 2 of DOE Circular No. 2006-06-009, the termination of the DWS arrangement shall apply to the grid where WESM is operational.

## **Section 2. Disconnection Policy.**

2.1 Disconnection of Non-WESM Members. Pursuant to Section 2.2.4.2 of the WESM Rules, all persons or entities who fail to register with the WESM within ninety (90) days from the effectivity of this Circular shall be disconnected from the grid. This condition shall initially apply to the Luzon grid where there is WESM operation.

2.2 Other grounds for disconnection. The DOE shall provide other grounds for disconnection of persons or entities in the guidelines as it may deem proper pursuant to the overall intent of the EPIRA.

Pursuant to Section 4.1. below, the DOE shall formulate the necessary guidelines for the disconnection of persons or entities who fail to comply with this Circular, taking into consideration existing laws and procedures.

**Section 3. Transition Period.** Section 1 and 2 above are hereby subjected to a transition period of ninety (90) days from the effectivity of this Circular. Within the 90-day period, the following shall take place:

3.1 All DUs, i.e. privately-owned utilities and electric cooperatives, generation companies, and other entities connected to the grid, are hereby directed to register with the WESM. Failure to comply with this requirement shall result in the disconnection of the concerned entity pursuant to Section 2 of this Circular.

3.2 Any DU, i.e. privately-owned utilities and electric cooperatives, which has arrearages with NPC and PSALM at the time of the effectivity of this Circular, shall be allowed to register in the WESM; *Provided*, that such DU shall settle its arrearages or enter into a restructuring agreement with NPC and PSALM within ninety (90) days from the effectivity of this Circular. The failure of

any electric power industry participant to comply with this requirement within the prescribed period shall constitute a violation of this Circular and shall result in the disconnection of the participant from the grid. For this purpose, the subsequent settlement or restructuring of the arrearages with NPC and PSALM is hereby considered a condition for the reconnection of the participant.

3.3 In the case of private entities, i.e. generation companies, distribution utilities, transmission service providers and other service providers, settlement arrangements of the outstanding obligations, if any, shall be governed by their existing bilateral contracts.

#### **Section 4: Responsibilities of Entities:**

4.1 Pursuant to the mandate of the DOE under Section 37(p) of the EPIRA to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA and the WESM Rules, the DOE, in coordination with NGCP, TRANSCO, NPC, PSALM, NEA, and PEMC shall provide the guidelines within ninety (90) days from the effectivity of this Circular for the disconnection of persons or entities who fail to comply with this Circular.

4.2 In addition, the DOE shall, together with PEMC and NEA, provide the necessary support, including liaison with financial institutions, to the DUs in need in complying with this Circular and the requirements for registration with the WESM.

4.3 Pursuant to the EPIRA and the OATS Rules, NGCP is hereby given the authority to disconnect from the grid persons or entities who fail to comply with their obligations under the OATS Rules, the Grid Code, the WESM Rules, and this Circular

in accordance with the guidelines to be issued by the DOE in Section 4.1 of this Circular.

4.4 PEMC shall continuously monitor and submit regular reports to the DOE on the status of the registration in the WESM.

4.5 PSALM and NPC shall provide the DOE all information on DWS arrangements and assist the DOE in the implementation of the termination of the DWS arrangement. PSALM and NPC are likewise required to submit to the DOE a regular monthly report on the restructuring of the outstanding obligations of its customers.

4.6 NEA is directed to provide assistance to all electric cooperatives for their registration in the WESM, including compliance with the requirements to settle or restructure their outstanding obligations with NPC and PSALM. It shall, together with the DOE, undertake an information and education campaign for the termination of the DWS arrangement and the implementation of the disconnection policy.

4.7 All electric power industry participants are directed to register in the WESM pursuant to WESM Rules 2.2.4.2.

**Section 5. Creation of Implementation Review Committee (IRC).** An IRC composed of representatives from DOE, PEMC, PSALM, NPC, TRANSCO, NEA, and NGCP is hereby created. The DOE shall chair the IRC.

5.1 The IRC shall be responsible for ensuring the smooth termination of the DWS arrangement and the implementation of the disconnection policy.

5.2 The IRC shall formulate the implementing rules and regulations of this Circular.

**Section 6. Separability Clause.** If for any reason, any section or provision of this Circular is declared unconstitutional or

invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**Section 7. Effectivity and Publication.** This Circular shall be effective fifteen (15) days from its publication in a newspaper of general circulation. PEMC is hereby directed to

publish this Circular in the market information website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Philippines May 6, 2010

## DEPARTMENT CIRCULAR NO. 2010-06-0007

DIRECTING THE PREPARATIONS FOR THE TRADING OF ANCILLARY SERVICES IN THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (“WESM”)

---

**WHEREAS**, Section 37 of EPIRA Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, provides the mandate of the Department of Energy (“DOE”) to “ensure the reliability, quality and security of supply of electric power, encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources and develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

**WHEREAS**, the DOE is also mandated under Section 30 of the EPIRA to establish the Wholesale Electricity Spot Market (“WESM”) that would facilitate a transparent, competitive, and reliable market for electricity;

**WHEREAS**, the DOE, jointly with the electric power industry participants, is tasked to formulate the detailed rules for the WESM and, pursuant to this, the DOE upon the joint endorsement of electric power industry participants promulgated the Wholesale Electricity Spot Market Rules (“WESM Rules”) on 28 June 2002 through Department Circular

No. DC-2002-06-003;

**WHEREAS**, the Philippine Electricity Market Corporation was constituted as the autonomous group market operator of the WESM;

**WHEREAS**, upon declaration by the DOE through Department Circular No. DC-2006-06-0008, the WESM commenced commercial operations in Luzon on 26 June 2006;

**WHEREAS**, the WESM Rules in Section 10.3 provided that, initially, only energy shall be traded upon commencement of the WESM;

**WHEREAS**, for ancillary services, the WESM Rules Section 10.3.2.3 provides that when applicable and reasonably feasible, the Market Operator of the WESM shall establish a spot market mechanism for competitive spot market trading in the purchase of certain reserve categories and that the DOE shall declare the commencement of the spot market for ancillary services.

**WHEREAS**, the WESM Price Determination Methodology as approved by the Energy Regulatory Commission in its Decision dated 20 June 2006 in ERC Case No. 2006-007 RC embodies the principle of the co-optimization of reserve and energy in the pricing and

scheduling processes of the WESM;

**WHEREAS**, there is a need to establish the conditions and the roles and responsibilities of concerned agencies and entities in the preparations for the establishment and commencement of the spot market for ancillary services;

**NOW**, premises considered, the DOE hereby declares as follows -

**SECTION 1. Scope and Application.** This Circular shall apply to the agencies and entities named in this Circular and to all electric power industry participants.

**SECTION 2. Spot Market Mechanism for Ancillary Services.** The spot market for ancillary services shall be made an integral part of the WESM and shall cover the reserve categories as prescribed in the WESM Rules and as may be proposed by the Market Operator in consultation with the System Operator and approved by the Philippine Electricity Market Board in accordance with the WESM Rules. For this purpose, the principle of the co-optimization of reserve and energy as provided for in the WESM Rules and the approved WESM Price Determination Methodology shall always be followed.

**SECTION 3. Responsibilities.** Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the WESM Rules and other relevant laws and issuances, the following agencies and entities are enjoined to extend their full cooperation toward the preparations for the establishment and commencement of the trading of reserves in the WESM (“reserve market” for brevity).

**SECTION 3.1. Philippine Electricity Market Corporation (“PEMC”).** Pursuant to its mandate as the autonomous group market operator of the WESM, the PEMC shall complete its preparations for the establishment of the reserve market. Its

preparatory activities shall include, but not be limited to:

- (a) Securing regulatory approval of the pricing and cost recovery methodology for reserves, provided that the methodology shall be consistent with the relevant provisions of the WESM Rules and the duly approved WESM Price Determination Methodology;
- (b) Ensuring that the WESM Market Management System and other market infrastructure, both hardware, software and necessary interfaces, are in place to support the operations of the trading of reserves in the WESM;
- (c) Ensuring readiness of all WESM members and trading participants as well as WESM service providers by conducting training, stakeholder consultations and other information dissemination activities to fully inform the WESM members and participants of the relevant methodologies and processes for the trading of reserve;
- (d) Review the existing WESM Rules, manuals and its internal business processes relevant to the trading of reserve and provision of ancillary services and, if warranted, propose and secure approval for changes to said rules, manuals, and business processes; and
- (e) Comply with all directives from the DOE pertaining to the establishment of the reserve market.

**SECTION 3.2. National Grid Corporation of the Philippines.** The NGCP shall ensure that its performance of its functions and obligations pursuant to its mandate on the provision of ancillary services are in compliance with the EPIRA and its Implementing Rules and Regulations, the WESM Rules, the Philippine Grid Code, the Open Access

Transmission Service Rules (“OATS Rules”), and other relevant rules and regulatory issuances. Toward this end, it shall closely coordinate with PEMC and the DOE to ensure that all pre-requisites and conditions for the establishment of the reserve market are complied with and completed in a timely manner.

**SECTION 3.3. National Electrification Administration.** The NEA shall render appropriate assistance to electric cooperatives (“ECs”) in ensuring their readiness for the commencement of the WESM reserve market. It shall submit regular reports to the DOE on the status of the activities undertaken together with the ECs in performing their responsibilities under this Circular.

**SECTION 3.4. WESM Members and Electric Power Industry Participants.** All WESM Members and Trading Participants, as well as non-registered WESM electric power industry participants are hereby directed to undertake their own preparations to ensure their readiness for the commencement of the WESM reserve market. All qualified participants intending to participate in the WESM reserve market as ancillary services providers shall obtain the necessary regulatory approvals as such and shall ensure compliance with the requirements set forth in the WESM Rules and other requirements as may be set by the PEMC and NGCP for the registration and accreditation of ancillary services providers in the WESM.

**SECTION 4. Criteria and Conditions for Declaration of Commencement of Spot Market for Ancillary Services.** Pursuant to its mandate, the DOE shall determine the feasibility and reasonability of the commencement of the commercial operations of the reserve market in the WESM. Towards this end, it shall establish appropriate criteria for assessment of the

readiness of all electric power industry participants to participate in and of the NGCP and PEMC to operate the reserve market. The DOE shall declare commencement of the commercial operations of the reserve market upon its determination that the conditions and criteria it has set have been substantially complied with.

**SECTION 5. Reportorial Requirements.** For purposes of monitoring compliance with the directives under this Circular, the PEMC, NGCP, NEA, and other relevant agencies shall be required to submit reports on the progress and status of their preparations and readiness to the DOE from time to time.

**SECTION 6. Supervision by the DOE.** The DOE shall continue to oversee the development of the WESM which includes, among other things, the trading of reserves. Toward this end, it shall undertake such actions as provided in the EPIRA, its Implementing Rules and Regulations, and the WESM Rules in connection with the establishment of the WESM.

**SECTION 7. No amendment or repeal of existing laws.** Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

**SECTION 8. Effectivity and Publication.** This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. The PEMC is also hereby directed to publish this Circular in the WESM Market Information Website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Metro Manila, Philippines, June 23, 2010.

**JOSE C. IBAZETA**  
Acting Secretary



## DEPARTMENT CIRCULAR NO. 2004-06-006

PRESCRIBING THE QUALIFICATION CRITERIA FOR THE QUALIFIED THIRD PARTY PURSUANT TO SECTION 59 OF "THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001," AND ITS IMPLEMENTING RULES AND REGULATIONS

---

**WHEREAS**, it is the policy of the State to ensure and accelerate the total electrification of the country;

**WHEREAS**, Section 59 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or "EPIRA," has opened to other Qualified Third Parties (QTPs) the provision of electric service in remote and unviable areas that the franchised Distribution Utility is unable to service;

**WHEREAS**, pursuant to Rule 13 of the Implementing Rules and Regulations (IRR) of "EPIRA" or "EPIRA-IRR," the Department of Energy (DOE) is tasked to issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties can participate in the missionary electrification projects set forth in the Missionary Electrification Development Plan (MEDP);

**WHEREAS**, pursuant to Rule 14 of the EPIRA-IRR, the DOE shall set the criteria for determining QTPs that may participate in providing electricity to remote and unviable areas which may include financial, technical, environmental, and other indices of performance;

**WHEREAS**, the DOE deems it appropriate to broaden its approach to rural and missionary electrification through the creation of a market-based environment that is conducive to private sector investment and participation and encourages technology transfer, and research and development;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING**

**PREMISES**, the DOE hereby promulgates the following guidelines setting out the qualification criteria for the determination of QTPs that may be authorized to participate in missionary electrification program of the Government as set out in the EPIRA and its IRRs.

### SECTION 1. *Definition of Terms.* –

Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- (a) "*Distribution Utility*" refers to any electric cooperative, private corporation, government-owned utility or existing local government unit, which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA;
- (b) "*Missionary Electrification*" refers to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels;
- (c) "*Missionary Electrification Development Plan*" or "*MEDP*" refers to the five-(5) year plan of the DOE, updated annually, to implement missionary electrification program of the Government and serves as basis for the determination by the ERC of the Universal Charge for Missionary Electrification (UC-ME);
- (d) "*Person*" refers to a natural or juridical person, as the case may be;

- (e) “*Qualification Criteria*” refers to the set of financial, technical, and other indices of performance prescribed by the DOE as basis for determining QTP/s to serve Unviable or Waived Area/s;
- (f) “*Qualified Third Party*” or “*QTP*” refers to the alternative electric service provider authorized to serve remote and unviable areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR;
- (g) “*Unviable Area*” refers to a geographical area within the franchise area of Distribution Utility where immediate extension of distribution line is not feasible; and
- (h) “*Waived Area*” refers to an area within the franchise area of a Distribution Utility declared as unviable and cannot be served for any reason by the Distribution Utilities.

SEC. 2. *Declaration of Policies.* –

It is hereby declared the policies of the DOE that:

- (a) Any Person who meets the Qualification Criteria set forth in this Circular shall be accredited as a QTP.
- (b) All QTPs shall comply with the technical, financial, reporting, environmental, and other performance standards, which the DOE and/or ERC may prescribe relative to the provision of electricity services to remote and Unviable Areas.
- (c) No Person shall be allowed to serve Waived Areas unless it is first accredited as a QTP by the DOE.

SEC. 3. *Guiding Principles in Accrediting QTPs.*

–

- (a) Any Person who intends to serve a Waived Area may apply with the DOE through the Electric Power Industry Management

Bureau (EPIMB) for accreditation as a QTP. The DOE shall evaluate an application based on the Qualification Criteria set forth in this Circular.

- (b) DOE may impose upon any Person limitations of its accreditation as a QTP, including limitations as to the size of an area a QTP is allowed to apply to serve (where size will be measured by number of potential customers and/or probable peak demand).

SEC. 4. *Eligibility Criteria for Qualified Third Party.* –

(a) *General*

- (i) To be accredited as a QTP, a Person must demonstrate that it is financially and technically capable, and of good standing in the business community.
- (ii) Any Person registered with the Philippine Securities and Exchange Commission which meets the criteria set forth in this Circular may be accredited as a QTP.
- (iii) Organizations eligible for accreditation may include, without limitation, private firms, Local Government Units, Cooperatives, Non-Government Organizations, Generation Companies or its subsidiaries, or subsidiaries of Distribution Utilities.

(b) *Limitation on Accreditation*

The DOE may restrict the type or size of system that a QTP will be allowed to construct and operate. Such restrictions may include, without limitation, (i) restrictions on the size of system, (ii) restrictions on the location of the system; and (iii) restrictions on the generating technology to be used, where the size of the system is restricted, such restriction may be expressed in terms of generation

capacity, technology, and/or number of connections to be served.

(c) *Technical Criteria*

(i) To be accredited as a QTP, an interested Person must demonstrate that it has the technical skills and capacity to operate a power generation facility and/or an electric power distribution system for public supply.

(ii) In order to demonstrate the required skills and capacity, applicants must provide:

(1) Full details of the technical skills and experience of the key management team responsible for the operation of the system. These details should include relevant technical and business management qualifications as well as full descriptions of experience relevant to the technical and commercial operation of electric power generation and supply systems.

(2) Details of the proposed arrangements for the acquisition, training and contracting of the necessary expertise that the applicant does not possess at the time of application.

(3) Details of how the applicant proposes to design, construct, operate, and maintain the generation and associated distribution system to be used in its operations, including its proposed plans for dealing with major operating contingencies such as a failure of its generating plant or a major fault on its distribution system.

(4) Details of the procedures that the applicant proposes to put in place for the billing to and collection of payment from customers and maintain accounting records of its commercial operations. An undertaking that the applicant will allow DOE and/or ERC to open its accounting records relating to its operations, when necessary.

(5) A statement certifying that the applicant intends to design, construct, operate and maintain its generation and distribution systems in full compliance with the relevant requirements prescribed under the applicable laws including EPIRA and its attendant rules and regulations.

In addition to the above mandatory information requirements an applicant may provide additional supporting documents, such as evidence indicating experience in related areas and operation of other utility or infrastructure businesses. The DOE may, at its discretion, take such information into account when deciding whether or not to approve the application, or whether or not to impose a limitation on accreditation in accordance with Section 4 (b) of this Circular.

(d) *Financial Criteria*

(i) To be accredited as a QTP, an interested Person must demonstrate that it has the financial capacity to finance a power generation facility and electric power distribution system of the size likely to be required for the operations. The DOE may impose a limitation, in accordance with Section 4 (b) of this Circular, on the size of system that the applicant may install and operate, consistent with its financial capacity.

(ii) Proof of financial capacity may include, among others:

- (1) Evidence of the total net assets of the organization;
- (2) A letter of credit or letter of intent to invest from a bank or another organization provided that the DOE is satisfied that the other party has adequate financial capacity and indeed has the intent to invest or provide credit;
- (3) The most recent annual report or financial accounts of the applicant duly certified as correct by a registered auditor or accountant; and
- (4) Proof of adequate insurance coverage and compliance with all Philippine labor laws.

(iii) Any Person, which cannot meet the financial criteria outlined above, may be accredited if they can demonstrate to DOE the capacity to finance a system of the proposed size.

Factors, which DOE would consider, would include:

- (1) History of operating profitably a generation, distribution or other utility business of comparable size.
- (2) History of developing infrastructure projects of similar size.
- (3) A letter of testimonial from a reputable financial institution attesting that the Applicant and/ or members of the consortium are banking with them, that they

are in good financial standing and that they have adequate resources.

- (4) Other clear indications of ability to access the required finance.

(e) *Good Standing*

Any interested Person seeking accreditation may be accredited if they can demonstrate to DOE the capacity to finance a system of a size likely to be authorized for the provision of electric service to Waived Area/s and was able to submit proof that it is in good standing with the business community in which it operates.

Factors which could lead DOE to determine that an organization is not in good standing may include:

(i) The involvement in the proposed key management team or in a management position in the organization of anyone who:

- (1) Is an undischarged bankrupt;
- (2) Has been convicted of any crime involving fraud or dishonesty committed in the last ten (10) years; and
- (3) Has been successfully sued for fraud, breach of director's duties or any similar action.

(ii) Being currently suspended or blacklisted by NPC, or by any other government agency, whether in its capacity as an individual or partnership or corporation or as a member of a joint venture or consortium.

(iii) Has a negative slippage of more than fifteen (15) percent in any

of its ongoing contracts with the Government, NPC or any electric utility or generation companies, or record of unsatisfactory past performance particularly non compliance with contract terms, plans and specifications, defective workmanship, abandonment of work and similar deficiencies.

(f) Local Enterprises and Renewable Technologies.

Consistent with Government policies in relation to the development of local enterprises and renewable technologies, DOE will encourage local enterprises and organizations with expertise in renewable technologies to operate as QTPs. Such local enterprises and organizations may be given limited accreditation in accordance with Section 4 (b) of this Circular, consistent with the extent to which they demonstrate technical, financial capacity and good standing criteria.

SEC. 5. *Repealing Clause.* –

All pertinent issuances, circulars and memoranda inconsistent with this Circular

are hereby amended or repealed accordingly.

SEC. 6. *Saving Clause.* –

(a) If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

(b) The implementation of this Circular shall not exempt the parties from complying with applicable laws and government rules and regulations.

SEC. 7. *Effectivity.* –

This Circular shall take effect within fifteen (15) days upon publication in newspaper of general circulation.

**VICENTE S. PÉREZ, JR.**

Secretary

Fort Bonifacio, Taguig  
Metro Manila, Philippines  
8 June 2004

## DEPARTMENT CIRCULAR NO. 2005-06-005

DIRECTING ALL DISTRIBUTION UTILITIES TO FILE PETITION WITH THE ENERGY REGULATORY COMMISSION FOR APPROVAL OF REVISED LIFELINE RATE STRUCTURE

---

**WHEREAS**, Section 73 of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (“EPIRA”), provides for the setting by the Energy Regulatory Commission (“ERC”) of a socialized pricing mechanism to be called the lifeline rate for the marginalized end-users;

**WHEREAS**, Section 4 (j), Rule 7 and Section 3 (b), Rule 20 of the Implementing Rules and Regulations of EPIRA (“EPIRA-IRR”) provides for the obligation of Distribution Utilities to file the necessary petition with the ERC recommending the level of consumption (kWh per month) to be qualified for the lifeline rate to be applied to its marginalized end-users;

**WHEREAS**, with the implementation on 1 July 2005 of the recently-enacted Republic Act No. 9337 removing the exemption of electricity sales and services, as well as sales of petroleum products, from value-added tax (“VAT”), electricity rates are also expected to increase;

**WHEREAS**, the anticipated increase in electricity rates resulting from the imposition of VAT on electricity and petroleum sales and services, together with the continued and excessive increases in the world oil prices, has prompted Her Excellency President Gloria Macapagal-Arroyo to mandate all government agencies to explore and adopt the necessary measures to mitigate the impact of the imposition of the VAT on all electricity end-users, particularly the poorest of the poor;

**WHEREAS**, Section 2 (f) of EPIRA declares it a policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

**WHEREAS**, Section 1 (r), Rule 3 of the EPIRA-IRR provides that it is the function of the Department of Energy (“Department”) to exercise such other powers as may be necessary or incidental to attain the objectives of the Act;

**NOW, THEREFORE**, premises considered, the Department, pursuant to its mandate, directs all Distribution Utilities, as defined in the EPIRA, to file the necessary petition with the ERC for the adoption of revised lifeline levels of consumption and corresponding rate structures to mitigate the impact of increases in electricity rates resulting from the imposition of the VAT, rising oil prices and other costs of production.

SECTION 1. All Distribution Utilities, upon the effectivity of this Circular, shall immediately commence the process of reviewing and revising their ERC-approved lifeline rate

structure in consideration of the following principles:

- (a) To the fullest extent possible, current lifeline end-users should continue to enjoy the full benefits of the subsidies under the levels of consumption approved by the ERC for each Distribution Utility prior to the implementation of changes in tax laws.
- (b) When necessary, Distribution Utilities shall modify the levels of consumption in their revised lifeline rate structure to allow more end-users to qualify therein.
- (c) To the greatest extent possible, Distribution Utilities shall strive to adopt a revised lifeline rate structure that would factor in the end-user’s consumption level and ability to bear additional burden of increasing electricity rates with the end in view of protecting residential end-users, particularly the poorest of the poor.

SEC. 2. In reviewing and revising their respective lifeline rate structures, Distribution Utilities may consult with and seek the assistance of the Department.

SEC. 3. All Distribution Utilities shall file their respective petitions for revised lifeline levels of consumption and corresponding rate structure with the ERC at the soonest possible time in view of the exigency of the situation and the need to adopt these mitigating measures at the soonest possible time.

SEC. 4. This Circular shall take effect immediately upon issuance thereof, with copies sent to each Distribution Utility.

Fort Bonifacio, Taguig, Metro Manila, 22 June 2005.

**RAPHAEL P. M. LOTILLA**  
Secretary



# Chapter II

## Rural Power Projects

### ENERGY REGULATION NO. 1-94

RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE “DEPARTMENT OF ENERGY ACT OF 1992”

---

**SECTION 1. Title.** – Pursuant to Section 5 (i) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992,” which provides that the Department shall “devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements,” the Department of Energy hereby adopts and promulgates the following rules and regulations.

**SECTION 2. Policy Objectives.** –

- a) To recognize and provide recompense for the contribution made by the pertinent barangay, municipality or city, province or region in hosting within their respective territorial jurisdiction the energy resource and/or energy-generating facility through which the rest of the country is energized;
- b) To lessen conflict of rights among LGUs, the community and people affected, the energy resource developers or power producers, and the appropriate agencies of the national government, recognizing that the relationship among them is

affected with public interest; and

- c) To promote harmony and cooperation among host LGUs, the community and people affected, the energy resource developers or power producers, and the appropriate agencies of the national government whereby the community and people affected and the host LGUs are provided with the benefits under a coordinated and consultative or participative process while the power producers or energy resources developers are accorded community support and legal protection by the host LGUs.

**SECTION 3. Scope of Application.** – These rules and regulations shall apply to energy resource development projects and energy-generating facilities located in all barangays, municipalities, cities, and provinces, except those falling within Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-Lapu City and Mandaue City), Metropolitan Davao and other highly urbanized cities as defined under Section 452 of the *Local Government Code*.

The benefits under these rules shall be required prospectively from all energy resource developers and power producers including those existing at the time of the effectivity of these rules and regulations.



**SECTION 4. Definition of Terms.** – Unless the context otherwise indicates, the terms used in these rules and regulations shall have its following respective meanings:

- (a) “Barangay” shall be as defined in the *Local Government Code of 1991*.
- (b) “Benefits” refers to all forms of assistance or services that can be extended to the host LGU or host region.
- (c) “Beneficiary” refers to the host LGU or the host region entitled to the benefits.
- (d) “City” shall be as defined in the *Local Government Code of 1991*.
- (e) “Cogeneration Facility” refers to a facility which produces electricity or mechanical energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes through the sequential use of energy and is accredited as a cogeneration facility by the DOE.
- (f) “Community and People Affected” refers to *bonafide* residents of a host LGU and who were relocated as a result of the construction, and/or operation of an energy generating facility or the development of an energy resource development project, to official resettlement sites.
- (g) “DENR” refers to the Department of Environment and Natural Resources as reorganized by Executive Order No. 192, series of 1987, as amended.
- (h) “DILG” refers to the Department of Interior and Local Government created pursuant to Republic Act No. 6975, as amended.
- (i) “Distribution System” refers to the electric system of an electric utility which delivers electricity from transformation points to the transmission system to consumers or end users.
- (j) “DOE” refers to the Department of Energy created pursuant to Republic Act No. 7638.
- (k) “DOH” refers to the Department of Health created pursuant to Executive Order No. 119, series of 1987, as amended.
- (l) “DOLE” refers to the Department of Labor and Employment defined under Book IV, Title VII of Executive Order No. 292, series of 1987, as amended.
- (m) “DPWH” refers to the Department of Public Works and Highways as reorganized by Executive Order No. 124, series of 1987, as amended.
- (n) “Electricity Sales” refers to the sales proceeds derived by the power producer from the actual generation of the energy-generating facility net of station own use, and losses.
- (o) “Electric Utility System” refers to the distribution system of an electric cooperative, government-owned or privately-owned electric utility operating within one or several electric utility power grids.
- (p) “Electric Utility” refers to the electric cooperative, government-owned or private-owned electric utility within one or several electric utility power grids.
- (q) “Electrification” refers to the provision of dependable and adequate electric services to a franchised area.
- (r) “Energy-efficient technologies” refers to technologies which meet the ratio of useful energy output to energy input prescribed by the DOE under its circulars and/or its implementing rules and regulations.

- (s) “Energy-generating Facilities” refers exclusively to any of the following types of power plants constructed/operated to supply electricity:
1. “Coal-fired Power Plant” refers to an electricity-generating plant which uses coal (whether locally produced or imported) as fuel.
  2. “Geothermal Power Plant” refers to an electricity-generating plant which utilizes geothermal steam and/or brine.
  3. “Hydroelectric Power Plant” refers to an electricity-generating plant which utilizes the kinetic energy of falling or running water.
  4. “Oil-fired Power Plant” refers to an electricity-generating plant which utilizes liquid or gaseous fuel such as industrial fuel oil or diesel. It shall not, however, include any electricity-generating plant fired by natural gas or liquefied petroleum gas.
- (t) “Energy resource” refers only to any of the following:
1. “Biomass” refers to any organic matter used for energy, broadly classified into plant matters and animal residues. Plant matters are further categorized into (a) naturally-occurring resources such as forest and agricultural residues, and (b) cultivated resources such as woodlot or tree farms.
  2. “Coal” refers to a black or brownish-black combustible rock formed by the accumulation, decomposition, and compaction of plant materials under a long acting geological process.
  3. “Geothermal Resources” refers to all geothermal fluids existing naturally or formed by the artificial introduction of adequate flow and heat essential for hydropower generation.
  4. “Hydrothermal or Hydro resources” refers to natural streams, rivers or lakes that can be harnessed to provide the combination of adequate flow and heat essential for hydropower generation.
  5. “Natural Gas” refers to gas obtained from the boreholes and wells and consisting primarily of hydrocarbons.
- “Energy resource” may be classified as either conventional or nonconventional, imported or indigenous.
- 1) “Conventional energy resources” refer to energy resources such as coal, petroleum, hydro, and natural gas.
  - 2) “Nonconventional energy resources” refer to energy resources which are renewable and indigenous, the conversion and utilization technology of which is characterized as decentralized and modular. These shall include biomass, mini-hydro, ocean waves, solar, wind, and similar energy resources.
  - 3) “Imported energy resources” refer to energy resources which are principally obtained from outside the Philippines.
  - 4) “Indigenous energy resources” refer to energy resources which originate or occur naturally in the Philippines.
- (u) “Energy resource developer” refers to any person (whether natural or juridical) that is engaged or intends to engage in the development of energy resources.

- (v) “Franchise” refers to a privilege extended to a person (whether natural or juridical) to operate, maintain and/or distribute power within a specific geographical area.
- (w) “Franchised area” refers to a geographical area franchised to a public service entity, such as electric cooperative, or local government-owned or privately owned, electric utility.
- (x) “Franchise holder” refers to a person (whether natural or juridical) holding a franchise.
- (y) “Host LGU” refers to a local government unit (barangay, municipality, city or province) where the energy resource and/or energy-generating facility is located as determined under Section 5 hereof.
- (z) “Host region” refers to the region where the energy resource and/or energy-generating facility is located under Section 5 hereof.
- (aa) “Load dispatch” refers to the system of directing electricity supplied from energy-generating facilities to various electricity consumers.
- (ab) “Local Government Code” refers to Republic Act No. 7160.
- (ac) “Micro-hydroelectric power development” or “Micro-hydro” refers to the construction and installation of a hydroelectric-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of less than 101 kilowatts.
- (ad) “Mineable coal reserve” refers to a well-defined mass of coal from which extraction is economically feasible.
- (ae) “Mini-hydroelectric power development” or “Mini-hydro” refers to the construction and installation of a hydroelectric-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.
- (af) “Municipality” shall be defined as in the *Local Government Code of 1991*.
- (ag) “NEA” refers to the National Electrification Administration created pursuant to Presidential Decree No. 269, as amended, tasked primarily to administer the rural electrification program.
- (ah) “NPC” refers to the National Power Corporation created pursuant to Republic Act No. 6935, as amended.
- (ai) “On-going energy-generating projects” refers to energy-generating facilities which are existing, and to those projects under which energy-generating facilities are under construction, at the time of the effectivity of these rules and regulations.
- (aj) “Power producer” refers to any person (natural or juridical) who is engaged in the construction and/or operation of an energy-generating facility.
- (ak) “Province” shall be as defined in the *Local Government Code of 1991*.
- (al) “Public Service Cooperative” refers to an electric cooperative that is organized as a cooperative under the provisions of Republic Act No. 6938.
- (am) “Reservoir” refers only to any of the following:
  1. “Geothermal reservoir” refers to a subsurface geological environment where the geothermal fluids accumulate and circulate.

2. "Hydro reservoir" refers to either a natural lake or an artificial lake created by the impounding of streamflow, runoff and subsurface water behind a dam.
3. "Petroleum/Natural Gas reservoir" refers to a subsurface-geological environment where crude oil and/or natural gas accumulate under adequate trap conditions.

(an) "Rural Electric Cooperative" refers to a corporation organized under Republic Act 6038, or Presidential Decree No. 269, as amended by Presidential Decree No. 1645, or a cooperative supplying or empowered to supply electric service which has heretofore been organized under the *Philippine Non-Agricultural Act*, whether or not converted under Presidential Decree No. 269.

(ao) "Small Scale Mining (SSCM) Permittee" refers to a holder of a DOE permit to exploit coal resources covering an area within a coal operating contract or a free area outside of a coal operating contract. An SSCM coal permit covers a compact and contiguous area not exceeding five (5) hectares within a geological coal reserve not exceeding 50,000 metric tons.

(ap) "Watershed" refers to a land area drained by a stream or fixed body of water and its tributaries having a common outlet for surface runoff.

**SECTION 5. Beneficiaries. –**

- (a) Direct benefits shall be provided to the host LGU, especially the community and people affected while equitable preferential benefits shall be provided to the host region.
- (b) Community and People affected shall be understood as defined under Section 4 (f) of these rules and regulations.

(c) Host LGU or host region shall be understood as follows:

(1) With respect to energy-generating facilities, in the case of power barges, the host LGU or host region is that where the power barge is moored; in all other cases, the host LGU or host region is that where the energy-generating facility is physically located. Energy-generating facilities shall not include transmission lines and substations.

(2) With respect to energy resources:

(a) Coal. The host LGU or host region is that where the producing positive coal reserve is located, as delineated by geophysical, geological and exploration surveys.

(b) Geothermal. The host LGU or host region is that where the producing geothermal reservoir is located as delineated by detailed geochemical, geophysical, and exploration surveys.

(c) Hydro. The host LGU or host region where the hydro reservoir is located, as delineated by detailed topographic, geological, and geotechnical investigations; reservoir and dam height optimization studies; and as delineated by a detailed ground survey.

(d) Petroleum/Natural Gas. The host LGU or host region is that where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical exploration surveys.

The developed energy resource field is delineated on the ground by the production facilities and other physical installations related to the project.

- (e) Unless otherwise provided in these rules and regulations, the DOE shall, after due consultation with the affected parties, determine the proportion of benefits to be received by one host LGU vis-à-vis another host LGU in the event the energy-generating facility or the energy resource development overlaps more than one host LGU. In rationalizing such sharing of benefits, the DOE shall consider the area occupied and the amount of energy generated or produced by the energy-generating facility or energy resource project in one host LGU vis-à-vis the other host LGUs, and such other equitable basis for apportionment.

**SECTION 6. Nature of Benefits.** – Consistent with Section 5 hereof, the community and people affected, the pertinent host LGU indicated below or the host region shall be entitled to the following benefits from the energy resource developer or power producer, depending on the type of energy resource being developed or energy-generating facility being constructed or operated:

(a) Power Benefits.

- (1) Electrification. – (a) The power producer shall set aside twenty-five percent of one centavo (P 0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facility as an electrification fund to be applied exclusively to the missionary electrification of the official resettlement or relocation sites of the community and the people affected, and thereafter, of the relevant host LGU or host region in the following order of radiating benefit: (i) the host barangay, (ii) the host municipality or city, (iii) the host province, and finally (iv) the

host region. In implementing said order of radiating benefit, priority in electrification shall be given to the more populous barangay that is nearer in distance to the electricity-generating facility. Any dispute regarding the sequence of electrification of barangays shall be settled through a final determination by the DOE after due consultation with the affected parties. In settling such disputes, the DOE shall give due weight to the relative population density of, and proximity of the energy-generating facility to, the contending host LGUs.

- (2) The electrification of the host municipality or city may be accomplished through a public service cooperative or PSC. In this connection, the NEA shall facilitate the granting of the necessary franchise to a PSC but upon satisfactory showing that such PSC is economically viable, and will be able to provide better service at lower cost to consumers within the pertinent host LGU. Once the PSC is established, the operator of the energy-generating facility shall provide, in a manner that will not entail substantial incremental cost to the operator, technical assistance to the PSC, particularly in the area of reducing system losses.
- (3) The PSC, or in its absence, the relevant franchise holder shall use the electrification fund exclusively to defray the cost of necessary capital expenditures associated with electrification such as distribution lines, transformers, and substations, and subsidiarily, associated operating expenses such as repairs and maintenance. Priority in extending expenditure shall be given to the extension and upgrading of distribution lines: *Provided however,*

That the PSC or in its absence, the relevant franchise holder shall retain each year twenty percent (20%) of the amount it received for the year to defray the cost of repairs and maintenance of its existing distribution lines and substations. The electrification fund shall be used as provided in Section 6 (a) (1) (c): *Provided however*, That the assets financed by the electrification fund shall not form part of the rate base, and the maintenance expenses as well as the depreciation of the assets financed by the electrification fund, shall not form part of the operating cost base of the PSC or relevant franchise holder, for purposes of setting its power tariffs and return on rate base.

- (4) The power producer shall be responsible for directly remitting the electrification fund to the PSC or in its absence, the relevant franchise holder. The DOE shall ensure that the electrification fund shall be used as provided in Section (a) (1) (c). Towards this end, the DOE shall formulate the appropriate guidelines and mechanisms for fund disbursement and utilization.

(b) Prioritization of load dispatch.

In times of energy shortage, the energy-generating facility shall prioritize up to twenty-five percent (25%) of its contracted or available capacity (whichever is lower) which shall be delivered to the appropriate electric utility for distribution to the official resettlement/relocation sites of the community and people affected, and thereafter, to the relevant host LGU or host region in the following order of radiating benefit: (i) power circuits in direct contact with the host barangay; (ii) power circuits in direct contact with the host municipality or city; (iii) power circuits in direct contact

with the host province; and (iv) power circuits in direct contact with the host region. The remaining seventy-five percent (75%) shall be dispatched to the grid so as not to unreasonably deprive other municipalities, cities, provinces, or regions of their energy requirements.

Towards this end, the energy generating facility, NPC, the relevant electric utility, and such other party that may be contractually involved with the generation, transmission, and distribution of power shall reach an agreement to ensure the implementation of this benefit, which agreement shall be approved by the DOE.

The NPC, unless another government owned and/or controlled corporation engaged in energy projects is designated by the Secretary of the DOE, shall effect the prioritization of load dispatch benefit in the absence of a power purchase agreement or arrangement between the power producer and the electric utility in the relevant resettlement/relocation sites or host LGU/s.

(c) Reduction in the cost of electricity.

- (1) Pursuant to the mandate of Section 294 of the *Local Government Code* that “at least eighty percent (80%) of the proceeds derived from the development utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located,” host LGUs are strongly urged to operationalize this directive through an appropriate system. The term “proceeds from the development and utilization of hydrothermal, geothermal, and other sources of energy” shall have the same meaning as it has under Section 294 of the *Local Government*

Code.

- (2) The host LGU, through its sanggunian, may pass a resolution specifying the terms of application of said proceeds pursuant to Section 294 of the *Local Government Code*. The amount appropriated under the resolution may be transferred to the relevant PSC, REC or electric utility operating within the host LGU. In turn, such PCC, REC or electric utility shall immediately apply the amount in the next billing to lower the cost of electricity in its franchised area within the host LGU.

(d) Skills Development.

For the community and people affected as well as *bona fide* residents of the host barangay, and the host community or city, the energy resource developer and/or power producer shall establish relevant training and skills development programs which may include the development of skills pertinent to business of energy generation or electrification and skills in reforestation and other agro-industrial skills. Towards this end, upon consultation with the appropriate government agencies, a memorandum of agreement may be entered into by the host barangay, the host city or municipality, and the energy resource developer or power producer. For monitoring purposes, a copy of such memorandum of agreement must be submitted to the DOE.

(e) Preference in Employment.

Qualified members of the community and people affected and qualified *bona fide* residents of the host barangay and the host municipality or city shall be given preference in employment with the energy-generating facility or energy development operation pursuant to the procedure set out under Republic Act

No. 6685 and the applicable provisions of Department Order No. 51 series of 1990 of the DPWH which sets forth the guidelines for the implementation of Republic Act No. 6685.

- (f) Preference in Procurement of Local Supplies and Services.

All energy resource developers and power producers shall source their supplies and service requirement from within the host LGU provided such supplies and services are available therein at competitive price, delivery/service schedule, quantity, and quality.

(g) Development and Livelihood Fund.

- (1) Consistent with Section 5 hereof, all power producers shall set aside twenty-five percent (25%) of one centavo (P 0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facility to establish and maintain a development and livelihood fund.

- (2) The development and livelihood fund shall be applied in an equitable, preferential manner for the exclusive benefit of the community and people affected, the host LGU or region in the following proportions: five percent (5%) to the barangays hosting the official resettlement/relocation sites of the community and the people affected, fifteen percent (15%) to the host barangay, twenty-five percent (25%) to the host municipality or city, twenty-five percent (25%) to the host province, and the remainder to the host region.

- (3) The power producer and the energy resource developer, to the extent of their respective contributions, shall administer the development and livelihood fund. They shall each submit to the DOE for the

latter's approval, development and livelihood programs after consultation with the appropriate affected parties.

- (4) The power producer and the energy resource developer shall each hold its contribution to the development and livelihood fund in trust for the beneficiaries as enumerated under Section 6 (e) (2). Such funds shall not be mingled with its general fund and must be deposited in interest bearing accounts. Interest earned on the development and livelihood fund shall accrue to the benefits enumerated under Section 6 (e) (2).
- (h) Reforestation, Watershed Management Health and/or Environment Enhancement Fund.
  - (1) One-half of one centavo (P 0.0005) per kilowatt-hour of the total electricity sales of the energy-generating facility shall be set aside by the power producer to be used for reforestation, watershed management, health and/or environment enhancement. The power producer and the energy resource developer, to the extent of their respective contribution to the fund, shall each submit work programs for reforestation watershed management, health and/or environment enhancement which would have to be approved by the DOE in consultation and close coordination with the DENR, the DOH, the relevant water districts, local government units, regional development councils, non-government organizations, and other affected parties. The power producer and/or the energy resource developer may provide for the contracting out of the proposed activities, provided that the power producer and/or the energy resource

developer shall remain primarily responsible for the implementation of such program. For a unified watershed management effort, however, the power producer and/or the energy resource developer shall turn over the amount allocated for reforestation and watershed management to the watershed reservation manager designated by law for the area.

The foregoing paragraph notwithstanding, the DOE may, at the request of the power producer and/or the energy resource developer after consultation with the local government officials, non-governmental organizations and other affected parties, redirect part or all of said fund in any given year to other projects which are determined to be more beneficial to the host LGUs with particular attention, although not limited to environmental projects with long-term benefits.

After commercial operation commences, benefits and/or financial assistance advanced after Republic Act No. 7638 became effective or pursuant to these rules and regulations by the energy resource developer or the power producer during pre-operation stage or before the start of commercial operation to secure the favorable endorsement of the community and people affected or the host LGUs, shall be applied at the rate of twenty percent (20%) per year by the energy resource developer, power producer or successors-in-interest assignees thereof, against the benefits required under these rules and regulations.

Cost incurred or to be incurred by the power producer or the energy developer to comply with environmental standards imposed under DENR Administrative Order Nos. 14 and 14A and with such other stricter emission, safety, health or environmental standards that may be imposed by any government agency in the future, may be deducted from the benefits required under these rules and regulations, but at a rate of not more than



fifty percent (50%) of the total benefits due in any year (inclusive of the twenty percent (20%) mentioned in the foregoing paragraph): *Provided*, That if in any year the cost of compliance exceeds fifty percent (50%) of the total benefits for the year. The uncovered cost shall be added to similar costs in subsequent years until the full amount is recovered without interest.

**SECTION 7. *Scope of Benefits.*** – The community and people affected, the relevant host LGU (indicated in the foregoing section) or the host region of the following energy-generating facilities or energy resource development projects shall be entitled to the corresponding benefits set forth below:

(a) Coal

(1) Coal Mines

- (a) Reduction in the cost of electricity under Section 6 (a) (3);
- (b) Skills development under Section 6 (b);
- (c) Preference in employment under Section 6 (c); and
- (d) Procurement of local supplies and services under Section 6 (d).

(2) Coal Thermal Power Plants

- (a) Electrification benefits under Section 6 (a) (1);
- (b) Prioritization of load dispatch under Section 6 (a) (2);
- (c) Skills development under Section 6 (b);
- (d) Preference in employment under Section 6 (c);

- (e) Procurement of local supplies and services under Section 6 (e);
- (f) Development and livelihood fund under Section 6 (e); and
- (g) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

(3) Mine-Mouth Coal Plants

- (a) Electrification benefits under Section 6 (a) (1);
- (b) Prioritization of load dispatch under Section 6 (a) (2);
- (c) Reduction in the cost of electricity under Section 6 (a) (3);
- (d) Skills development under Section 6 (b);
- (e) Preference in employment under Section 6 (c); and
- (f) Procurement of local supplies and services under Section 6 (d);
- (g) Development and livelihood fund under Section 6 (e); and
- (h) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

(b) Geothermal Resource Development Projects and Power Plants.

- (1) Electrification benefits under Section 6 (a) (1);
- (2) Prioritization of load dispatch under Section 6 (a) (2);

- (3) Reduction in the cost of electricity under Section 6 (a) (3);
- (4) Skills development under Section 6 (b);
- (5) Preference in employment under Section 6 (c);
- (6) Procurement of local supplies and services under Section 6 (d);
- (7) Development and livelihood fund under Section 6 (e);
- (8) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

Inasmuch as geothermal resource development projects and geothermal power plants are integral to each other, the community and people affected, the pertinent host LGU or host region shall be entitled to only one set of benefits from the geothermal resource developer and power plant operator which, with the exception of the benefit provided under Section 6 (a) (3), shall be shared by them equitably. Among the community and people affected, the pertinent LGU or region hosting the geothermal resource development project and those hosting the geothermal power plant, the DOE shall determine in an equitable manner the actual sharing of benefits between them upon consultation with the affected parties.

(c) Hydro Resource Development Projects and Power Plants.

- (1) Electrification benefits under Section 6 (a) (1);

- (2) Prioritization of load dispatch under Section 6 (a) (2);
- (3) Reduction in the cost of electricity under Section 6 (a);
- (4) Skills development under Section 6 (b);
- (5) Preference in employment under Section (b);
- (6) Procurement of local supplies and services under Section 6 (d);
- (7) Development and livelihood fund under Section 6 (e); and

- (8) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

Inasmuch as hydro development projects and hydroelectric power plants are integral to each other, the community and people affected, the pertinent host LGU or host region shall be entitled to only one set of benefits from the hydro developer and power plant operator which with the exception of the benefit provided under Section 6 (a) (3), shall be shared by them equitably. Among the community and people affected, the pertinent LGU or region hosting the hydro reservoir and those hosting the hydroelectric power plant, the DOE shall determine in an equitable manner the actual sharing of benefits between them upon consultation with the affected parties.

(d) Oil/Petroleum/Natural Gas.

- (1) Indigenous Petroleum
  - (a) Reduction in the cost of electricity under Section 6 (a) (3);

- (b) Skills development under Section 6 (b);
  - (c) Preference in employment under Section 6 (c); and
  - (d) Procurement of local supplies and services under Section 6 (d).
- (2) Oil-Fired Power Plants.
- (a) Electrification benefits under Section 6 (a) (1);
  - (b) Prioritization of load dispatch under Section 6 (a) (2);
  - (c) Skills development under Section 6 (b);
  - (d) Preference in employment under Section 6 (c);
  - (e) Procurement of local supplies and services under Section 6 (d);
  - (f) Development and livelihood fund under Section 6 (e); and
  - (g) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).
- (3) Natural Gas- and LNG-Fired Power Plants.
- (a) Electrification benefits under Section 6 (a) (1);
  - (b) Reduction in the cost of electricity under Section 6 (a) (3);
  - (c) Skills development under Section 6 (b);
  - (d) Preference in employment under Section 6 (c);
  - (e) Procurement of local supplies and services under Section 6 (d); and
  - (f) Development and livelihood fund equivalent to one-half of one centavo (P 0.005) per kilowatt hour, which amount shall be applied in an equitable preferential manner in accordance with the proportion prescribed under Section 6 (e) (2).
- SECTION 8. Exemptions. –**
- (a) Each of the following shall be exempted from providing the benefits required under these rules and regulations:
    - (1) a small-scale coal mining (SSCM) permittee;
    - (2) an energy-generating facility with an aggregate installed capacity or operating generating capacity that is less than ten (10) megawatts (MW);
    - (3) an energy-generating facility located in a special economic zone which sells or exports less than ten (10) megawatts (MW) of its surplus power output outside of the special economic zones where it is located;
    - (4) an energy-generating facility for the exclusive internal use of the owner (e.g., integrated to the plant); and
    - (5) an on-going energy-generating project with a negotiated benefits package which is better than or at least substantially equal to the benefits provided hereunder, as determined and certified by the DOE.
  - (b) Consistent with the policy of the State to accelerate the development and commercialization of non-conventional energy systems, and to provide incentives

for energy efficient technologies (such as cogeneration facilities), energy-generating facilities which utilize non-conventional energy resources, or energy efficient technologies shall not be required to provide the host LGU and/or host region with the benefits enumerated in these rules and regulations.

- (c) In meritorious cases similar to those enumerated in the foregoing Section 8 (a) and (b), the DOE may, after consultation with the affected parties, grant full or partial exemption upon application by the energy resource developer or power producer.
- (d) In any case of two or more proximate energy-generating facilities owned or operated directly or indirectly by the same person or entities, each of which was split to meet the criteria for exemption under Section 8 (a) (2) and (3), the Secretary may, in order to prevent evasion of these rules and regulations, consider said facilities as one. "Control" shall mean ownership of stocks in a corporation possessing at least one-third of the total voting power of all classes of stock entitled to one vote.
- (e) Notwithstanding Section 8 (a) and (b), consistent with Section 5 (i) of Republic Act No. 7638, the Secretary of the Department of Energy may authorize government-owned and/or controlled corporations engaged in energy resource development and/or energy-generating projects, to provide benefits or financial assistance to host LGUs equivalent to those required under these rules and regulations, and approve the same.

**SECTION 9. Review and Audit.** – With respect to the electrification fund, the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund, the power producer, the energy resource developer and the fund administrator of any of these

funds shall keep and maintain complete and separate books of account for such funds in accordance with generally accepted accounting principles. In addition, the power producer, the energy resource developer, (the and) the fund administrator shall submit to the DOE every six (6) months a detailed statement of the sources and uses of such funds. With respect to said funds, the DOE shall have the right to inspect, review, and audit the books of accounts of the power producer, the energy resource developer and the fund administrator to ascertain and ensure compliance with these rules and regulations, particularly that the funds had been and are being expended in accordance herewith. In this connection, the power producer, the energy resource developer, and the fund administrator shall allow duly authorized representatives of the DOE full access to their respective accounts, books and records. Should the DOE find that the funds are not being spent by the power producer, the energy resource developer and the fund administrator in accordance with these rules and regulations, the DOE may assign the funds to another entity to enable the fund purpose to be duly accomplished.

The DOE may require the power producer, the energy resource developer, or the fund administrator to post a bond therewith in an amount to be determined by the DOE.

**SECTION 10. Implementation and Enforcement Measures.** The DOE shall take all necessary reasonable measures to ensure the proper enforcement of these rules and regulations, which measures shall not be limited to those specified under this Section.

In the event of violation or non-compliance with these rules and regulations, the DOE may, upon prior notice and hearing to the power producer or the energy resource developer, (a) issue an order to the power producer or the energy resource developer to cease and desist operations; and/or (b) withdraw, suspend, revoke, cancel, or annul the geophysical survey or service contract

of the energy resource developer of the accreditation status granted to the power producer. However, in the case of willful violation of or willful failure to comply with these rules and regulation, the DOE may, without prior notice and hearing, but after proper investigation or verification, *muto proprio*, or upon verified complaint by any aggrieved party, proceed with the enforcement measures enumerated in this paragraph.

**SECTION 11. *Settlement of Disputes.*** – All conflicts or disputes arising from the implementation of these rules and regulations shall be under the jurisdiction of the DOE.

**SECTION 12. *Transition Period.*** – The electrification fund (including increments thereto), the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund (when applicable) shall be kept in trust by the power producer pending the formalization of the relevant guidelines on fund utilization and disbursement by the DOE. Interest earned during the transition

period shall be for the benefit of the trust. After due consultation with the relevant affected parties, the DOE shall formulate such guidelines.

**SECTION 13. *Separability Clause.*** – If any clause, sentence, paragraph or part of these rules and regulations shall be judged by any Court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder of said rules and regulations, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy.

**SECTION 14. *Effectivity.*** – These rules and regulations, and any amendments thereto shall take effect upon the lapse of thirty (30) days from complete publication in the *Official Gazette*, or in one (1) newspaper of general circulation, whichever occurs earlier.

**DELFIN L. LAZARO**

Secretary  
24 May 1994

## ENERGY REGULATION NO. 1-94-A

AMENDING ENERGY REGULATIONS NO. 1-94, DATED 24 MAY 2004 WHICH PRESCRIBED RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE DEPARTMENT OF ENERGY ACT OF 1992

---

**WHEREAS**, Energy Regulations No. 1-94 issued on 24 May 1994 prescribed the provision of direct benefits to pertinent local government units hosting energy resources and/or energy-generating facilities within their territorial jurisdiction, pursuant to Section 5 (i) of Republic Act No. 7638 (*Department of Energy Act of 1992*);

**WHEREAS**, under Section 8 of E.R. 1-94, an energy-generating facility fired by natural gas shall be exempted from providing the

benefits required under the said regulations;

**WHEREAS**, the Philippine Natural Gas Project is deemed as a high priority project that would need the favorable endorsement and full support to host LGUs of power plants fired by natural gas, including liquefied natural gas (LNG), but is precluded from authorizing the same under the said regulations;

**WHEREAS**, considering that natural gas and LNG have been recognized as

environment-friendly fuel that will have very minimal adverse environmental impact on communities affected, thereby unnecessary the provision of benefits for reforestation, watershed management, health and/or environment enhancement;

**WHEREFORE**, premises considered, the DOE hereby adopts and promulgates the following amendments to E.R. 1-94:

- (1) Amendment to Section 7 (d) of E.R. 1-94 to provide corresponding set of benefits exclusively for natural gas, LNG- and LPG-fired power plants, by deleting natural gas resource development projects under sub-section (i) and adding sub-section (3), to read as follows:

“SEC. 7. (d) Oil/Petroleum/Natural Gas.

“(1) Indigenous Petroleum

x x x

“(3) Natural Gas- and LNG-fired Power Plants

“(a) Electrification benefits under Section 6 (a) (1);

“(b) Reduction in the cost of electricity under Section 6 (a) (3);

“(c) Skills development under Section 6 (b);

“(d) Preference in employment under Section 6 (c);

“(e) Procurement of local supplies and services under Section 6 (d); and

“(f) Development and livelihood fund equivalent to one-half of one centavo (P 0.005) per kilowatt hour, which amount shall be applied in an equitable manner in accordance with the

proportion prescribed under Section 6 (e) (2).”

- (2) Amendment to Section 8 (a) of E.R. 1-94 by deleting sub-section (5) to exclude natural gas from the exemptions, to read as follows:

“SEC. 8. *Exemptions.* –

“(a) Each of the following shall be exempted from providing the benefits required under these rules and regulations:

“(1) a small-scale coal mining (SSCM) permittees;

“(2) an energy-generating facility with an aggregate installed or operating capacity that is less than ten (10) megawatts (MW);

“(3) an energy-generating facility located in a special economic zone which sells or exports less than ten (10) megawatts (MW) of its surplus power output outside of the special economic zones where it is located;

“(4) an energy-generating facility for the exclusive internal use of the owner (e. g., integrated to the industrial plant); and

“(5) an on-going energy-generating plant with a negotiated benefits package which is better than or at least substantially equal to the benefits provided hereunder, as determined and certified by the DOE.”

This Amendment shall take effect upon the lapse of fifteen (15) days from complete publication in one newspaper of general circulation in the Philippines.

31 July 1996, Fort Bonifacio, Metro Manila.

**FRANCISCO L. VIRAY**  
Secretary

## DEPARTMENT CIRCULAR NO. 2000-03-003

FURTHER AMENDING THE PROVISIONS OF ENERGY REGULATIONS 1-94, ENTITLED "RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE "DEPARTMENT OF ENERGY ACT OF 1992" AND ITS ATTENDANT RULES AND PROCEDURES

---

**WHEREAS**, Energy Regulations (E.R.) No. 1-94 promulgated on May 24, 1994 by the Department of Energy (DOE) prescribed the provisions of direct benefits to permit local government units (LGUs) hosting energy resource development projects and/or energy-generating facilities within their territorial jurisdiction, pursuant to Section 5 (i) of Republic Act No. 7638 (*Department of Energy Act of 1992*);

**WHEREAS**, E.R. No. 1-94 required energy resource developers and/or power producers to provide, among others, a set of financial benefits equivalent to one centavo per kilowatt-hour from electricity sale proceeds from their energy projects or energy-generating facilities;

**WHEREAS**, under Section 6 of E.R. No. 1-94, the host LGUs and host regions are entitled to the following benefits from the energy resource developers and/or power producer:

- (a) 25% of one-centavo (P 0.0025) per kilowatt for electrification fund;
- (b) 25% of one-centavo (P 0.0025) per kilowatt for development and livelihood fund; and
- (c) 50% of one-centavo (P 0.005) per kilowatt for reforestation, watershed management, health and/or environment enhancement fund;

**WHEREAS**, Department Circular No. 95-11-009 and Department Circular No. 96-08-009, issued November 8, 1995 and August 9, 1996, respectively, prescribed the guidelines and procedures for the granting

of the financial benefits required under E.R. No. 1-94 and established Trust Accounts for the electrification fund, the development and livelihood fund and the reforestation, watershed management, health and/or environment enhancement fund for the benefit of LGUs which are hosts to energy generating facilities and/or energy resource;

**WHEREAS**, full implementation of the grant of financial benefits has been hampered by concerns and issues requiring clarification of certain provisions of the aforesaid E.R. and circulars;

**WHEREAS**, the DOE conducted consultations with the concerned parties to address the aforesaid concerns and issues;

**WHEREAS**, upon said consultations, it has become imperative to amend certain provisions of the aforesaid E.R. and circulars to rationalize the above-mentioned allocations so as to effectuate more direct and immediate benefits to concerned LGUs hosting energy generating facilities and/or energy resource;

**WHEREFORE**, premises considered, the DOE hereby adopts and promulgates the following amendments to certain provisions of E.R. No. 1-94 and its attendant rules and guidelines:

SECTION 1. *Amendments to Section 3 of E.R. No. 1-94 on Scope of Application, to read as follows:*

"These rules and regulations shall apply to energy resource development projects and energy-generating facilities located in all barangays, municipalities, province

including those located within the Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-Lapu City, Mandaue City), Metropolitan Davao and other highly urbanized cities as defined under Section 452 of the *Local Government Code*.”

SEC. 2. *Amendment to Section 5 of E.R. No. 1-94 on Beneficiaries.* – Section 5.c. is hereby amended to clarify provisions of sections 5.c.(2) (b) and 5.c.(2) (c) and incorporate new Sections 5.c.(3) and 5.c.(4), to read as follows:

“Section 5.c. Host LGU or region shall be understood as follows:

x x x

“1. With respect to energy resources:

“(b) Geothermal. The host LGU with respect to geothermal resources is where the producing geothermal reservoir is located as delineated by geochemical, geophysical, and exploration surveys. “Producing geothermal reservoir” refers to the subsurface geological environment where the geothermal fluids accumulate and circulate, inclusive of the production and re-injection/recharge zones.

“(c) Hydro. The host LGU with respect to energy resources is where the hydro reservoir is located as delineated by detailed topographic, geological, and geotechnical investigation, reservoir and dam height optimization studies; and as delineated by detailed ground surveys. “Hydro reservoir” refers to either a natural lake or an artificial lake created by the impounding of stream flow, runoff and subsurface water behind the dam.

x x x

“(3) With respect to integrated energy generating facilities, the host LGU or region is that where the energy-generating facilities and energy resources are located.

“1. With respect to energy-generating facilities and/or energy resource located in a special economic zone, the host LGU or region is that where the special economic zone is located.”

SEC. 3. *Amendments to Section 6 of E.R. No. 1-94 on Nature of Benefits.*

(a) In line with the thrust of the government to improve access of electricity services to rural and non-viable areas and the high demand for electrification projects, the DOE finds it more beneficial to increase the fund allocation for electrification.

(i) Section 6.a.(1) of E.R. No. 1-94 is hereby amended to read as follows:

“Section 6.a.(1) Electrification

“(a) The power producer and/or energy resource developer shall set aside fifty percent of one-centavo (P 0.005) per kilowatt-hour of the total electricity sales of the energy-generating facilities as an electrification fund to be applied in the following radiating manner: (i) the official resettlement or relocation sites of the community and people affected; (ii) the host barangay; and (iii) the host municipality or city.

“After electrification has reached the municipal or city level, fifty percent (50%) of the said electrification fund or P 0.0025 per kilowatt-hour of total electricity sale shall be utilized for the electrification of barangays within the host province and region with priority given to arrears



identified in the provincial/regional development plan or energization plan. The remaining fifty percent (50%) of the electrification fund or P 0.0025 per kilowatt-hour of total electricity sales shall be utilized for energy-intensive development and livelihood projects or reforestation, watershed management, health and/or environment enhancement projects of the host communities following the proportion in Sec. 6.e. of E.R. No. 1-94, as amended by Section 3 (a) (ii) and Section 3 (a) (iii) hereof.

“(b) In implementing said order of radiating benefit, priority shall be given to the more populous barangay that is nearer in distance to the power plant and thereafter to the more populous barangay that is nearer in distance to the energy source. Any dispute regarding the sequence of electrification of barangays shall be settled through a final determination by the DOE after due consultation with the affected parties. In settling such disputes, the DOE shall give due weight to the relative population density and proximity of the energy-generating facilities to the contending host LGUs, as well as proximity to the nearest taping point of the franchised distribution utility.

“(c) Electrification of host LGUs or region shall be undertaken by the relevant franchised distribution utility or any of its duly accredited contractor/s, herein referred to as the project implementor. To accelerate, however, energization of host LGUs or region, the power producer or energy resource developer or their respective duly accredited contractor/s may implement such projects subject to the condition set forth under sub-paragraph (e) of this

Section: *Provided*, That in the case where such project is implemented through a contractor other than the franchised distribution utility, all works shall be done in conformity with the standard construction assemblies, duly accepted by the franchised distribution utility.

“(d) In order to achieve and maintain efficient, reliable and adequate supply of electricity, the total electrification fund may be utilized to defray the cost of necessary capital expenditures other than distribution lines such as but not limited to power transformers, substations and other power line equipment devices, and associated operating expenses such as repairs and maintenance, subject to the evaluation of the DOE.

“(e) All facilities financed from the electrification fund shall be owned, operated and maintained by the relevant franchised distribution utility which is obligated to provide services to the concerned LGU. The distribution utility may however, contract the operation and maintenance of the line to the private sector provided that the electricity rate charges to the customers shall be approved by the Energy Regulatory Board (ERB). Notwithstanding the foregoing provisions, for purposes of setting the power tariffs and return on rate base, the assets financed by the electrification fund shall not form part of the rate base. Likewise, the maintenance expenses as well as the depreciation of the assets financed by the electrification fund, shall not form part of the operating cost base of the relevant franchised distribution utility.”

(ii) Section 6.e. is hereby amended to read as follows:

*“Section 6.e. Development and Livelihood.*

x x x

“1. The development and livelihood fund shall be applied in an equitable preferential manner for the exclusive benefit of the community and people affected, the host LGU or region in the following manner:

- “(a) Resettlement Area – 5%
- “(b) Host barangay – 20%
- “(c) Host Municipality/City – 35%
- “(d) Host Province – 30%
- “(e) Host Region – 10%

*“Provided, that in the absence of official resettlement area, funds allocated for the area shall form part of the allocation of the host barangay. For funds allocated to the host province and host region, preferential benefits shall be given to communities hosting the areas traversed by transmission lines and substations or similar facilities.”*

(iii) Section 6.f. is hereby amended to read as follows:

*“Section 6.f. Reforestation, Watershed Management, Health and or/Environment Enhancement Fund*

One-fourth of one centavo (P 0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facilities shall be set aside by the power producer and/or energy resource developer to be used for reforestation, watershed management, health and/or environment enhancement which shall be allocated as follows:

- “(a) Resettlement Area – 5%
- “(b) Host Barangay – 20%

- “(c) Host Municipality/City – 35%
- “(d) Host Province – 30%
- “(e) Host Region – 10%

*“Provided, that in the absence of official resettlement area, funds allocated for the resettlement shall form part of the allocation of the host barangay. Reforestation and watershed projects shall be prioritized by the following:*

- “(a) Concerned DOE attached agencies for energy reservations; and
- “(b) DENR Regional Office for non-energy reservation areas.”

(iv) The following additional paragraphs are hereby incorporated after Section 6.f of E.R. No. 1-94, to read as follows:

*“The foregoing paragraph notwithstanding, financial benefits required from power producer and/or energy resource under Sec. 6.e and Sec. 6.f of E.R. No. 1-94, as amended in Section 3 (a) (ii) and Section 3 (a) (iii) hereof, with respect to energy-generating facilities located within the Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-Lapu City, and Mandaue City), Metropolitan Davao and other highly urbanized cities shall be set aside into one account to finance electrification projects and thereafter, any development, livelihood, reforestation, watershed management, health and/or environment enhancement projects deemed beneficial to any host barangay, host municipality/city and host province.*

*“Electrification of host LGUs shall be based on the following priority areas:*

“(a) Resettlement area, host barangay and host city of the energy generating facilities and/or energy resource;

“(b) Host communities of other facilities and/or energy resource with insufficient accrued electrification fund;

“(c) Areas traversed by transmission lines and sub-stations or similar facilities; and

“(d) Areas not directly connected to the grid or national transmission system which include isolated or remote communities.”

“In the case of an integrated energy generating facility where the generating facility is located within a highly urbanized city and the corresponding resource is located outside the said highly urbanized city, the financial benefits shall be utilized in accordance with Section 6.e and Section 6.f of E.R No. 1-94, as amended in Section 3 (a) (ii) and Section 3 (a) (iii) hereof.”

(v) The last two paragraphs of Section 6 on Advanced Financial Assistance is amended to read as follows:

“After commencement of the commercial operation of a power generating facility, the benefits and/or financial assistance advanced by the energy resource developer or the power producer during pre-operation stage or before the start of commercial operation for the purpose of securing favorable endorsement from the community and people affected or the host LGUs, after Republic Act No. 7638 has become effective or pursuant

to these rules and regulations, shall be credited by the energy resource developer, power producer or successor-in-interest assignees against the benefits required under these rules and regulations.

“The total advanced financial assistance shall be amortized at a rate of twenty percent (20%) of the total accrued yearly financial benefits, irrespective of the type of projects and programs implemented, until such time that the expenses have been fully paid.”

SEC. 4. Consistent with Section 3 hereof, Section 7.d of E.R. No. 1-94, as amended by E.R. No. 1-94-A, is hereby amended to read as follows:

“Section 7.d. Oil/Petroleum/Natural Gas.

“1. Indigenous Petroleum and/or Natural Gas Resources Development Projects

X X X

“1. Natural Gas-and LNG-fired Power Plants

“(a) Electrification benefits equivalent to twenty-five percent of one centavo (P 0.0025) per kilowatt-hour to be applied in the radiating manner: (i) the official resettlement or relocation sites of the community and people affected; (ii) the host barangay; (iii) the host municipality or city, (iv) host province; and (v) host region;

“(b) Skills development under Section 6 (c);

“(c) Preference in employment under Section 6 (c);

“(d) Procurement of local supplies and services under Section 6 (d);

“(e) Development and livelihood fund equivalent to fifty percent of one centavo (P 0.005) per kilowatt-hour, which amount shall be applied in an equitable preferential manner in accordance with the proportion prescribed under Section 6 (e) of E.R 1-94 as amended in Sec. 3 (a) (ii).”

SEC. 5. *Amendment to Department Circular No. 95-11-009.* –

(a) Amendment to Section 1.e, to read as follows:

“Section 1.e. Administration of the funds shall be undertaken by any of the following:

“(1) The National Power Corporation (NPC), for its energy-generating facilities/projects, with respect to DLF and RWMHEEF.

“(2) The DOE, through its Financial Management Services, for and on behalf of energy-generating facilities and/or energy resource development projects owned and/or operated by the following entities:

“(a) For NPC with respect to EF;

“(b) For NPC-Philippine National Oil Company (PNOC) integrated energy projects with respect to EF, DLF and RWMHEEF;

“(c) For independent power producers (IPPs) under such private power schemes as Built-Operate-Transfer (BOT), Energy Conversion Agreement (ECA), Rehabilitate-Operate-Lease (ROL), etc., and involving sale of

the generated electricity to the NPC with respect to EF, DLF and RWMHEEF; and

“(d) For IPPs involving sale of the generated facilities/projects to the franchised electric distribution utilities with respect to EF, DLF and RWMHEEF.

“(3) In the event that the energy generating facilities/projects of the NPC have been privatized, all funds shall be transferred to DOE for administration. Accordingly, Memorandum of Agreements (MOAs) entered into by NPC and DOE shall be amended to reflect new owner of the facility and assignment of responsibilities to the new owner for the settlement of fund to DOE.”

(b) Amendment to Section 4 of Department Circular 95-11-009 on Project Implementation, to read as follows:

“SEC. 4. *Project Implementation*

“(a) The power producer and/or energy resource developer shall assist the host LGUs in the preparation of annual work program/project proposals consistent with Annex “A”, to be implemented in any given year. The amount of financial benefit accruing to the pertinent funds in the immediate preceding year shall be used as basis in the preparation of annual work program/project proposals. The said annual work program/project proposal shall be submitted by the power producer and/or energy resource developer not later than 15 March of every year.

“(b) All work programs/project proposals for DLF and RWMHEEF

shall be implemented within one year upon receipt of funds. Said work programs/projects proposals shall be implemented, supervised and administered by the concerned LGU.

“(c) The power producer and/or energy resource developer shall review work programs/project proposals on development and livelihood, and reforestation, watershed management, health and/or environment enhancement duly endorsed by the host LGUs/region through a resolution passed by its sanggunian/Regional Development Council. In the case of the official resettlement area, work program/project proposals may be endorsed by the resettlement organization, association or cooperative duly certified by the power producer and/or energy resource developer and registered under the concerned government agencies. The power producer and/or energy resource developer shall make the appropriate endorsement of annual work program/project proposals to DOE for further review and approval. The review and approval of said work program/project proposals shall be completed by DOE within twenty (20) days upon receipt of complete documentation. Thereafter, project implementation shall proceed as prescribed under Sub-section f (1) hereof.

“(d) For reforestation and watershed management projects, work program/project proposals should be coordinated and endorsed by the DENR Regional

Office or the watershed management administrator in the area.

“(e) For electrification program, the power producer and/or energy resource developer shall coordinate with the concerned relevant franchised distribution utility in the development of said program for the communities/barangays energization/prioritization in any given year. The annual electrification programs shall be directly transmitted to the DOE through EIAB for review and evaluation. The NEA shall assist the DOE in the review and evaluation of said electrification programs. Thereafter, project implementation shall proceed as prescribed under Sub-section f(2) hereof.

“(f) Upon submission of complete documentation of the work program/project proposals, project implementation shall proceed in any of the following manner:

“(1) For development and livelihood, and reforestation, watershed management, health and/or environment enhancement projects a Memorandum of Agreement (MOA) shall be forged among the DOE, power producer and/or energy resource developer, and the concerned LGU to effect project implementation and funds commitment. The DOE/NPC for their respective administered fund shall then make the necessary fund allocation and shall forthwith release the project funds directly to the concerned host LGU or relevant project implementor within fifteen (15) days upon submission of complete supporting documents

pursuant to the provisions in the MOA.

“(2) For electrification projects, a Memorandum of Agreement (MOA), shall be forged among the DOE, relevant franchised distribution utility/project implementor, power producer and/or energy resource developer, and the concerned host LGU to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the funds allocation and shall forthwith release the funds to the franchised distribution utility/project implementor within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

“(a) Implementation of electrification projects utilizing funds accrued since the establishment of the trust accounts shall follow Sub-section (e) and Sub-section (f) (2) hereof.

“(b) All fund disbursements shall follow government accounting and auditing rules and regulations.

“(c) In the event of unjustified disbursement of fund and non-completion or delay in the implementation of the work program by the LGU concerned, the DOE shall defer releases of fund for the succeeding year/s or take appropriate and reasonable measures to impose necessary sanctions in accordance with any existing and future government rules and regulations until such time that the LGU would be able to justify said disbursement to the satisfaction of the DOE.”

(c) Consistent with Section 5.b hereof, the Annexes of A, B and C of Department Circular No. 95-11-009 are hereby repealed.

SEC. 6. Amendment to Section 1 (f) of Department Circular No. 95-11-009, as amended by Department Circular No. 98-11-010, to read as follows:

“(f) All interest earnings from the funds shall be set aside into one trust account to be utilized in the order of the following priority:

“(a) Electrification of the direct host barangay and host municipality/city with insufficient accrued electrification fund;

“(b) Electrification of areas traversed by transmission lines and substations or similar facilities;

“(c) Electrification of areas not directly connected to the grid or national transmission system which include isolated or remote communities; and

“(d) Any project that will protect the host LGUs and sustain the operation of the energy resource/energy generating facilities.”

SEC. 7. *Amendments to Department Circular No. 96-08-009.* –

(a) Amendments to Section III on Utilization of the Electrification Fund, to read as follows:

“In cases where the grid-type is deemed unviable for particular host LGU or host region, as determined by the DOE, the funds intended for the purpose may be ordered redirected by the DOE for appropriate energy projects that can provide immediate electrification to such host LGU or

region, through the use of new and renewable energy (NRE) technologies with electricity-generating potentials like solar energy, mini-hydro, biomass and such other similar projects.

“New and renewable energy project proposals for host LGU or region shall be referred by the Energy Industry Administration Bureau (EIAB) to the Energy Utilization Management Bureau (EUMB) of the DOE for evaluation. The NRE technology recommended by EUMB to be adapted may be contracted out by the DOE.

“For the purpose of this subsection, a rural energy service provider having expertise and good track record in the field of indigenous or renewable energy development, may be tapped to implement the electrification of the host LGUs.”

(b) Amendments to Section IV on Sharing of Benefits, to read as follows:

“IV. Sharing of Benefits

“(i) In the event that the generating facilities and/or the energy resource overlaps more than one host LGU, the development and livelihood fund and the reforestation, watershed management, health and/or environment fund shall be equally allocated among host LGUs: *Provided, however,* That in cases where the political boundaries of the energy generating facilities and/or energy resource are clearly delineated by land surveys duly approved by the DENR-Land Management Bureau, sharing shall be allocated based on the percentage of the land area occupied by the said generating facilities and/or energy resource.

“(ii) For integrated energy resource and energy generating facilities where the facilities are located in a highly urbanized city and the corresponding energy resource is located outside said city, sharing shall be as follows:

“(a) 50% for the host communities of energy generating facilities; and

“(b) 50% for the host communities of energy resource.”

SEC. 8. *Community Relations Officer (COMREL).* –

The power producer and/or energy resource developer is hereby required to designate one Community Relations Officer (COMREL) for each power plant, tasked to:

- (a) Coordinate with the LGU on the preparation of its annual work program/project proposals;
- (b) Assist in the preparation of all work program/project proposals prior to release of funds;
- (c) Monitor the implementation of all DOE approved work programs/project proposals; and
- (d) Act as liaison officer to all concerned government agencies relative to the implementation of E.R. No. 1-94, as amended.

SEC. 9. *Qualified development and livelihood (D & L) and reforestation, watershed management, health and/or environment enhancement (RWMHEE) projects.* –

All work program/project proposals should be able to demonstrate the potential for enhancing progress, the provision of a decent source of livelihood, or the upliftment of the community’s general condition of living. In this regard, the DOE deemed it appropriate

to qualify projects on D&L and RWMHEE as listed under Annex "A" hereof.

SEC. 10. *Other Provisions.* –

- (a) All Department Circulars, Orders, Memoranda or other issuances or portions thereof which are inconsistent with this Circular are hereby superseded, modified or amended accordingly.
- (b) All exemptions previously granted by the DOE to power producer and/or energy resource developer in respect to the required financial benefits, unless otherwise provided for in this Circular, shall continue to be enforced.
- (c) All provisions of this Circular shall be applied to the financial benefits accrued from the period 26 December 1998 and the succeeding quarters thereafter.

(d) Provisions for interest earnings shall be applied since the establishments of trust accounts and the succeeding quarters thereafter.

(e) This Department Circular shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 17 March 2000.

**MARIO V. TIAOQUI**  
Secretary

Witnessed by:

**NAZARIO C. VASQUEZ**  
President, PNOC-EDC

**EDGARDO BAUTISTA**  
President, SEP

**DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT  
AND  
DEPARTMENT OF ENERGY**

**JOINT CIRCULAR NO. 95-01**  
*October 31, 1995*

***To: ALL LOCAL CHIEF EXECUTIVES, SANGGUNIANGBAYAN/PANGLUNGSOD/  
PANLALAWIGAN MEMBERS OTHER CONCERNED PARTIES***

***Subject: GUIDELINES AND PROCEDURES ON THE UTILIZATION OF THE SHARE  
OF NATIONAL WEALTH TAXES, ROYALTIES, FEES OR CHARGES***

---

This Circular is issued to prescribe the guidelines and procedures to be followed by the host Local Government Unit (LGU) to implement the provisions of Republic Act (RA) 7160 otherwise known as the Local Government Code (LGC) of 1991 and its Implementing Rules and Regulations (IRR) specifically on Sections 289-294 of the LGC and Art. 388-392 of its IRR which provide for

the utilization of the 80% of the net proceeds derived from either the one percent (1%) of the gross sales or receipts of the preceding fiscal year or forty percent (40%) of the national wealth taxes, royalties, fees or charges derived by any national government-owned or controlled corporation in the development and utilization of hydrothermal, geothermal and other sources of energy, whichever



will produce a higher share for the local government unit, and forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from royalties and such other fees or charges and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of national wealth within their territorial jurisdiction.

Moreover, this Circular will provide the mechanics and options for the host LGU in the application of direct benefits to communities which shall be eighty percent (80%) of the proceeds derived from the national wealth taxes, royalties, fees or charges to be applied solely to lower the cost of electricity in the LGU where such a source of energy is located.

## Section 1. DEFINITION OF TERMS

- 1.1 National Wealth-refers to all natural resources situated within the Philippine territorial jurisdiction including lands of public domain, water, minerals, coal, petroleum, mineral oils, potential energy sources, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources and all quarry products.
- 1.2 National Wealth Taxes, Royalties, Fees or Charges any levy or tax, royalty, fee or charge derived from the development and utilization of the natural wealth.
- 1.3 Host LGU refers to the local government unit (barangay, municipality, city or province) where the facility extracting national wealth is located.
- 1.4 Subsidy Scheme is a plan designed to extend directly to intended beneficiaries the amount of LGU's share in national wealth taxes, royalties, fees or charges for the reduction in the cost of electricity.
- 1.5 Non-subsidy Scheme is a plan utilizing a method or strategy with the end in view of lowering the cost of electricity per

kWh or lowering the electric bill of the consumers within the particular area of the host LGU.

- 1.6 Electric Franchise Holder – refers to a person, whether natural or juridical, who is privileged to operate, maintain and/or distribute electric power within a specified geographic area.
- 1.7 Mining Taxes – refers to excise taxes imposed on the privilege to explore, develop and exploit mining resources. For internal revenue tax purposes, mining taxes shall refer only to the excise tax on mineral products imposed under Sec. 151 (a) of the National Internal Revenue Code, as amended by E.O. No. 273.
- 1.8 Geothermal sources – refer to all geothermal fluids existing naturally or formed by the artificial introduction of fluids into naturally hot formations, heat energy in the earth, and any by-products derived from these.
- 1.9 Hydrothermal sources – refer to natural streams, rivers or lakes that can be harnessed to provide the combination of adequate flow and heat essential for hydropower generation.

## Section 2. GENERAL GUIDELINES

### 2.1 REDUCTION OF COST OF ELECTRICITY

To implement the provision under Section 294, Book II of the Local Government Code that “at least eighty percent (80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal and other sources of energy shall be applied solely to lower the cost of electricity in the LGU where such source of energy is located,” the following are the procedures, mechanics and guidelines to be adopted by the LGU which may either be a barangay, municipality/city or province entitled to such benefits;

2.1.1 Either one or a combination of two basic approaches can be employed in the implementation of reduction in cost of electricity, subsidy scheme and non-subsidy scheme.

2.1.2 In selecting the scheme to be adopted, the LGU must consider the intended impact that must be synchronized with the LGU's development plans and shall depend on the magnitude of the national wealth share from taxes, royalties, fees or charges and the number of consumer or volume of power consumed.

## 2.2 SUBSIDY SCHEME

Under this scheme, proceeds from share in the national wealth will be directly utilized to subsidize cost of power used by consumers of host LGUs. This scheme may take the form of the following which the host LGU may choose from:

2.2.1 Subsidy Per Consumer – an equal or pre-determined level or rate of subsidy per qualified consumer:

- 2.2.1.a All consumer types
- 2.2.1.b Residential consumers only
- 2.2.1.c. Other preferred types of consumer combinations such as: commercial/ industrial, public/ buildings, irrigation/ communal water system, street lights, etc.

2.2.2 Subsidy of Power Consumption – amount of subsidy depends on magnitude of power consumption of qualified consumers:

- 2.2.2.a. All consumer types

2.2.2.b Residential consumers only

2.2.2.c. Other preferred types of consumer combinations

Moreover, the host LGU can utilize along with either of the above options/schemes, the following auxiliary options:

- a. With or without ceiling (amount or consumption);
- b. Graduated discount rates (per kWh per level of consumption) per consumer type.

Please refer to Annexes A and B for formulate and sample computations.

## 2.3 NON-SUBSIDY SCHEME:

The Host LGU can initiate and adopt non-subsidy schemes that can lower the cost of electricity of consumers in the area.

The benefits may take the form of but not limited to the reduction of electricity losses through technical upgrading and rehabilitation of distribution lines, use of energy saving devices, et..

The host LGU shall submit its proposal to the National Electrification Administration (NEA). NEA shall then submit its findings to DOE for approval.

The said proposal shall indicate the strategies to be employed, resources required and the projected benefits in terms of reduction in cost of electricity.

2.4 The host LGU shall, through a resolution of its sanggunian body, manifest the scheme/s to be adopted. It may utilize different scheme or combination of schemes each year as it may deem necessary or applicable subject to public information and consultation.

2.5 Close coordination between the LGU, electric franchise holder, the DOE and its

attached agencies must be maintained in order to facilitate subsidy computation and effective implementation of the benefits.

### Section 3. PAYMENT OF SUBSIDY

Payment of subsidy to qualified consumer shall be effected through the following:

- a. reimbursement by the LGU directly to qualified consumers;
- b. through the electric franchise holder which shall directly deduct the amount of subsidy computed from the qualified consumers' bills to be served.

In the instance where the LGU opts to course the payment and extension of subsidy directly through the electric franchise holder operating within the area, a memorandum of agreement (MOA) shall be executed between the LGU and the electric franchise holder.

The MOA shall specify, among others, the scheme adopted by the host LGU, procedures and frequency of remittance of the national

wealth tax, royalty, fee or charge to the franchise holder for allocation to qualified consumers, incremental service charges to be imposed by the electric franchise holder to the LGU, and the effectivity and terms of duration of the MOA.

When the remittance of the allocated share of the LGU exceeds the total subsidy extended for the duration specified in the MOA, the electric franchise holder shall revert back the excess remittance to the specific fund of the concerned host LGU.

In no case shall the total subsidy extended exceed(s) the allocated share of the LGU national wealth tax, royalty, fee or charge.

### Section 10. EFFECTIVITY

This circular shall take effect immediately.

**RAFAEL M. ALUNAN III**  
DILG Secretary

**FRANCISCO L. VIRAY**  
DOE Secretary

## DEPARTMENT CIRCULAR NO. 95-11-009

### GUIDELINES AND PROCEDURES FOR THE GRANTING OF FINANCIAL BENEFITS UNDER ENERGY REGULATIONS NO. 1-94

Pursuant to Energy Regulations No. 1-94 Implementing Section 5 (i) of Republic Act No. 7638 (*Department of Energy Act of 1992*), the Department of Energy (DOE) adopts the following guidelines and procedures for the granting to the host local government unit (host LGU) financial benefits established under E. R. 1-94, as follows: electrification fund; development and livelihood fund; and reforestation, watershed management, health and/or environment enhancement fund.

**SECTION 1. General Guidelines.** – All energy resource developers and power producers covered by Section 3 of E. R. 1-94 (Scope of Application) shall be guided by the following:

- (a) The effectivity of the grant of financial benefits, which shall be equivalent to one centavo per kilowatt-hour (kWh) of the total electricity sales of the energy-generating facility, shall be on 27 June 1994.

- (b) The electrification fund, the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund shall be kept in separate trust accounts in accordance with a Memorandum of Agreement to be entered into by and between the DOE and the energy resource developer and/or power producer.
- (c) The financial benefits shall be based on electricity sales proceeds derived from the commercial operation of the energy generating facility, calculated in accordance with the power producer's regular billing cycle.

To provide a uniform basis for calculating the financial benefits for purposes of initially establishing the trust accounts, the electricity sales proceeds derived from the nearest full billing month shall be applied whenever the period of operation constitutes a fraction of a billing month. Thus, the initial trust accounts for 1994 shall be reckoned on the full billing month nearest to 27 June 1994, i. e., 25 June – 24 July 1994.

- (d) Interest earned from the trust accounts shall be for the benefit of the trust.
- (e) The administration of the funds shall be undertaken by any of the following:
  - (1) the National Power Corporation (NPC), the Philippine National Oil Company (PNOC), and other government-owned and controlled corporations (GOCCs) that may be engaged in energy resource development projects and operation of energy generating facilities, for their respective energy generating projects/facilities and with respect to the development & livelihood, and reforestation, watershed management, health and/or environment enhancement funds; and

- (2) The DOE, through its Financial Management Services, for and on behalf of the energy generating projects/facilities owned and/or operated by private entities. The DOE shall also administer the electrification funds accruing from the NPC, PNOC, and other GOCCs.
- (f) The funds can only be utilized to finance projects and work programs duly endorsed by the host LGU and can only be defrayed for actual costs authorized under projects and work programs duly approved by the DOE through the Energy Industry Administration Bureau (EIAB).

SEC. 2. *Establishment of Trust Accounts.* – For purposes of establishing trust accounts for financial benefits accruing in 1994 and 1995, the energy resource developer and power producer shall be guided by the following procedures:

- (a) Within thirty (30) days after the effectivity of this Circular, the power producer shall submit to the EIAB separate Electricity Sales and Financial Benefits Report pertaining to the periods 27 June – 31 December 1994 and 1 January – 30 September 1995. This report shall contain the following data:
  - (1) Actual generation, station service/ own use, system loss, and electricity sales in kilowatt-hours (kWh) for the period;
  - (2) Accrued benefits to the host LGU derived from (1);
  - (3) Details of benefits and/or financial assistance advanced to the host LGU, if any; and
  - (4) Such other information which the DOE may deem necessary for review and audit purposes.

(b) In addition to complying with Section 2 (a), the power producer shall submit a joint undertaking with the concerned agency resource developer or private sector participant showing their respective fund contributions in any of the following cases:

- (1) Geothermal resource development projects/power plants and hydro development projects/power plants which are integral to each other and therefore, the pertinent host LGU shall be entitled to one set of benefits.
- (2) Energy-generating projects/facilities which are implemented/operated through private sector participation via the Build-Operate-Transfer, Rehabilitate-Operate-Lease or other variants of those private power schemes.

(c) Review of the Electricity Sales and Financial Benefits Report shall be made by the Financial Management Services (FMS) and Compliance Division of the DOE, in coordination with the EIAB.

(d) Within thirty (30) days after the effectivity of this Circular, the energy resource developer and the power producer shall establish separate trust accounts for the electrification fund, the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund which shall correspond to the accrued benefits of the host LGU for the period 27 June 1994 – 30 September 1995. The trust shall be established in any of the following government depository banks: Development Bank of the Philippines; Philippine National Bank; or Land Bank of the Philippines.

Funds to be administered by the DOE including all funds accruing from

energy generating facilities owned and/or operated by private entities and electrification funds accruing from the NPC, PNOC and other GOCCs shall be deposited in trust accounts in the name of the Department, as provided in a Memorandum of Agreement to be executed for the purpose by and between the DOE and such concerned energy resource developers and power producers.

(e) Within ten (10) days after the establishment of the trust accounts, the energy resource developer and the power producer shall submit to the FMS copies of the documents as proof of establishment of said trust accounts, subject to further verification thereof by the FMS.

### SEC. 3. *Administration of Funds.* –

(a) For purposes of maintaining the funds in the respective trust accounts, the energy resource developer/power producer shall henceforth deposit to the trust accounts, on a quarterly basis, financial benefits accruing from a billing quarter, i. e., three full billing months within the given quarter.

The energy resource developer and/or power producer shall make the deposits not later than thirty (30) days after the given quarter, and shall forthwith submit the proper documentation thereof to the FMS.

(b) The mechanism for crediting advances or incurred costs against the financial benefits shall be implemented by the DOE in accordance with the provisions of E. R. 1-94. For this purpose, any of the following may be undertaken:

(1) The energy resource developer or power producer which has advanced benefits and/or financial assistance to the host LGU may request the DOE

in writing to certify that the grant of said benefits and/or financial assistance complies with Section 5 (i) of Republic Act 7638 and to credit such benefits against the financial benefits required under E. R. 1-94. Such request shall include the requirements prescribed under Annex D hereof.

- (2) The energy resource developer or power producer which has incurred costs to comply with environmental standards imposed under DENR Administrative Order Nos. 14 and 14A and with such other stricter emission, safety, health or environmental standards that may be imposed by any government agency in the future may request the DOE in writing to deduct such costs from the financial benefits. Such request shall include the requirements prescribed under Annex D hereof.

- (c) Funds disbursement shall be consistent with the pertinent provisions of laws, rules on government spending and P. D. 1145 with respect to post-audit requirements of the Commission on Audit.

#### SEC. 4. *Project Implementation.* –

- (a) Within sixty (60) days after the effectivity of this Circular, the energy resource producer and power producer shall, after consultation with appropriate government agencies, submit to the EIAB a list of all beneficiaries entitled to the financial benefits, which shall comprise all barangays, municipalities, cities and provinces hosting their respective energy resource and/or energy-generating facilities.
- (b) For electrification projects, the power producer shall coordinate the development of any missionary electrification program with the relevant

franchise holder or public service cooperative (PSC) established for the purpose, after consultation with the host LGU. Project proposals recommended for implementation by any rural electric cooperative shall be directly transmitted to the National Electrification Administration (NEA), through its Technical Services Department, for review and approval. The NEA shall make the appropriate endorsement of approved project proposals to the EIAB and thereafter, project implementation shall proceed as prescribed under Section 4 (f) (3) hereof.

- (c) For projects and work programs on development and livelihood, reforestation, watershed management, health and/or environment enhancement, the energy resource developer and power producer shall submit to the EIAB for approval project proposals, which shall be duly endorsed by the host LGU through a resolution passed by its *sanggunian*.

Consistent with Sec. 6 (f) of E. R. 1-94, review of all proposed work programs on reforestation, watershed management, health and/or environment enhancement shall be done in consultation and coordination with the Department of Environment and Natural Resources (DENR), the Department of Health, relevant water districts and other concerned parties. Such work programs shall be duly endorsed by the local DENR officials such as the CENRO for municipal/barangay projects, the PENRO for provincial projects and the RED for regional projects and/or the watershed reservation manager designated by law for the area.

- (d) The amount of financial benefits accruing to the pertinent fund in any given year shall be used as basis in the preparation of project proposals.

(e) Any project proposal should be able to demonstrate the potential for enhancing progress, the provision of a decent source of livelihood, or the upliftment of the community's general condition of living. *Provided, That,* the basic infrastructure component of any such proposal shall constitute impact projects directly associated with electrification, development and livelihood, and reforestation, watershed management, health and/or environment enhancement. Project proposals shall include the requirements prescribed under Annexes A, B and C hereof.

(f) Evaluation of project proposals shall be completed by the EIAB within thirty (30) days from receipt of a complete proposal. Once the proposal is deemed beneficial to the host LGU, project implementation shall proceed in any of the following manner:

(1) For projects which will utilize NPC-PNOC-, or GOCC-administered funds, the DOE shall issue a Notice to Proceed authorizing the implementation of the project. Project implementation by NPC and PNOC shall be governed by procedures consistent with the guidelines for DOE-administered funds under Sec. 4 (f) (2). The NPC and PNOC, however, shall be directly responsible for the disbursement of the pertinent fund.

(2) For projects which will utilize DOE-administered funds, Memoranda of Agreement (MOA) to affect project implementation and funds commitment shall be forged between the DOE and the concerned host LGU. The DOE shall then make the necessary funds allocation and shall forthwith release the project funds directly to the concerned host LGU of relevant project implementor. Additional projects that may be undertaken by the concerned

host LGU may be effected through amendments in the original MOA.

(3) For electrification projects, a Tripartite Agreement shall be forged between the DOE, NEA and the concerned LGU to effect project implementation. The DOE shall then make the necessary funds allocation and shall forthwith release the project funds directly to the DOE which shall be responsible for funds disbursement.

#### SEC. 5. *Grant of Financial Benefits During Pre-Operation Stage.* –

(a) During construction of pre-operation stage, the energy resource developer and the power producer may advance benefits and/or financial assistance to the host LGU subject to the procedures on project implementation set forth in this Circular.

(b) Upon commencement of the energy generating facility's commercial operation, the power producer shall forthwith advise the EIAB in writing. Accordingly, the energy resource developer and/or power producer shall be subject to the requirements for establishing and maintaining the trust accounts set forth in this Circular.

(c) The trust accounts shall be established not later than thirty (30) days after the initial full billing quarter of commercial operations.

#### SEC. 6. *Review and Audit.* –

(a) For review and audit purposes, a detailed statement of the sources and uses of funds shall be submitted to the DOE by all energy resource developers and power producers within thirty (30) days after the end of every semester in any given year.

In the case of projects utilizing DOE-administered funds, concerned host LGUs or project implementors authorized to directly implement projects and DOE (in the case of electrification projects) shall likewise render a report on their uses of funds every six months during the entire implementation period of the project.

- (b) The FMS shall undertake the audit within a six (6) month period following the end of every semester and shall render a report of its audit findings to the energy

resource developer and power producer within sixty (60) days after the conduct of the audit.

This Circular shall take effect fifteen (15) days after publication in two (2) national newspapers of general circulation.

November 8, 1995.

**FRANCISCO L. VIRAY**  
Secretary

## DEPARTMENT CIRCULAR NO. 96-08-009

PROVIDING ADDITIONAL GUIDELINES FOR THE GRANTING OF BENEFITS UNDER ENERGY REGULATIONS NO. 1-94

---

SECTION 1. *Applicability of E.R. 1-94.* – To ensure a uniform applicability of E.R. 1-94, the DOE hereby directs the following entities to provide the benefits required under E.R. 1-94 and to establish trust accounts mandated under Department Circular No. 95-11-009:

- (a) For energy-generating facilities owned and operated by the National Power Corporation (NPC), the NPC shall fully shoulder the one centavo which shall constitute part of its generation cost.
- (b) For geothermal resource development projects and power plants, the energy resource developer and power producer shall equally contribute one-half centavo, which shall constitute part of the cost of geothermal steam.
- (c) For energy-generating facilities owned and/or operated by an independent power producer (IPP) under such private power schemes as Build-Operate-Transfer, Energy Conversion Agreement, Rehabilitate-Operate-Lease, etc., and involving sale of the generated electricity

to the NPC, the NPC shall fully shoulder the one centavo which shall constitute part of its cost of purchased power from the concerned IPP.

- (d) For energy-generating facilities owned and/or operated by an IPP and involving the sale of the generated electricity to an electric distribution utility or rural electric cooperative (REC), the IPP shall fully shoulder the one centavo which shall constitute part of its cost of power sold to the concerned utility or REC.

The NPC, Philippine National Oil Company IPPs, and other concerned energy resource developers and/or power producers shall accordingly adjust their steam costs, rates of purchase or sales, and where necessary, financial accounting systems, as a result of the foregoing requirement.

Any corresponding impact on existing contractual rates of power purchase or sale shall be determined by the concerned energy resource developer and/or power producer and submitted to the Energy Regulatory



Board for review and approval.

Accordingly, all concerned energy resource developers and power producers shall cause the establishment of trust accounts for the period ending July 31, 1996 within thirty (30) days after the effectivity of this Circular, in accordance with the guidelines and procedures under Department Circular No. 95-11-009.

The administration of trust accounts in the case of all energy-generating facilities classified under shall Part I (c) hereof shall be undertaken by the DOE, through its Financial Management Services.

**SEC. 2. *Granting of Benefits from Power Barges.*** – To rationalize the granting of benefits from power barges which operations may entail transfer or dispatch to different locations over certain periods, power barges moored at any location for less than six (6) months shall be exempted from providing the benefits required under E.R. 1-94. For this purpose, the concerned power producer shall submit to the DOE copies of relevant documents to support any request for such exemption.

**SEC. 3. *Utilization of the Electrification Fund.*** – In cases where grid-type electrification is deemed unviable for particular host LGUs or host regions as determined by the DOE, the funds intended for the purpose may be ordered redirected by the DOE for appropriate energy projects that can provide immediate electrification to such host LGU or host region, through the adaptation of renewable energy technologies with electricity-generating potentials like solar energy, mini-hydro, biomass and such other similar projects.

Renewable energy projects proposals shall be referred by the Energy Industry Administration Bureau to the Energy Utilization Management Bureau of the DOE for evaluation. Project implementation shall proceed in accordance with Section 4 (f) (1) and Section 4 (f) (2) of Department Circular 95-11-009.

**SEC. 4.** For the proper determination of the proportion of benefits to be received by one host LGU vis-à-vis another host LGU in the event the energy-generating facility or the energy resource development project overlaps more than one host LGU, the DOE shall adopt the provision of Section 292 of the Local Government Code which prescribes that “where the natural resources are located in two (2) or more provinces, or in two (2) more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of: (1) Population – Seventy percent (70%); and (2) Land Area – Thirty percent (30%).”

**SEC. 5. *Determination of Highly Urbanized Cities.*** – For the proper determination of energy resource development projects and energy-generating facilities located in highly urbanized cities and thereby exempted from providing the benefits pursuant to Section 3 of E.R. 1-94, the DOE shall adopt the list highly urbanized cities classified by the Bureau of Local Government Supervision of the Department of Interior and Local Government.

For immediate implementation.

August 8, 1996.

**FRANCISCO L. VIRAY**  
Secretary

## DEPARTMENT CIRCULAR NO. 98-11-010

SETTING ASIDE PORTION OF THE TRUST ACCOUNTS ESTABLISHED UNDER ENERGY REGULATIONS NO. 1-94, AS AMENDED, IN AMOUNTS WHICH ARE REASONABLE TO MEET AND COVER NECESSARY EXPENDITURES NEEDED OR TO BE INCURRED IN THE DISCHARGE BY THE DEPARTMENT OF ENERGY (DOE) OF ITS FUNCTIONS AS ADMINISTRATOR OF SAID FUNDS

---

**WHEREAS**, Energy Regulations 1-94, as amended by Department Circular No. 95-11-009, dated November 8, 1995 and Energy Regulations No. 1-94-A dated 31 July 1996, established Trust Accounts to be administered by the DOE for the electrification fund, the development and livelihood fund and the reforestation, watershed management, health and/or environmental enhancement fund for the benefit of local government units (LGUs) which are hosts to energy resources and/or energy generating facilities;

**WHEREAS**, the Trust Accounts consist of the following portions of the trust electricity sales of the power producer:

- (a) 25% of one centavo (P 0.0025) per kilowatt hour for electrification fund;
- (b) 25% of one centavo (P 0.0025) per kilowatt hour for development and livelihood fund; and
- (c) 50% of one centavo (P 0.005) per kilowatt hour for reforestation, watershed management, health and/or environment enhancement fund;

**WHEREAS**, to enable the DOE to discharge its functions as administrator of said Trust Accounts in a more responsive and effective manner, it is necessary to set aside portions of the above-mentioned funds in sufficient amounts, to be determined by the Energy Industry Administration Bureau (EIAB) and approved by the DOE Executive Committee annually, which are reasonable to meet and cover necessary expenditures to be incurred in connection with DOE's administration of

said funds.

**NOW, THEREFORE**, the applicable provisions of Department Circular No. 95-11-009, dated November 8, 1995, amending Energy Regulations No. 1-94, are hereby amended, as follows:

SECTION 1. Section 1 (f) of Department Circular No. 95-11-009, dated November 8, 1995 is hereby amended to read as follows:

“(f) The funds can only be utilized to finance projects and work programs duly endorsed by the host LGU and can only be defrayed for actual costs under projects and work programs duly approved by the DOE through the Energy Industry Administration Bureau (EIAB). However, the DOE shall set aside portions from the interest earnings of said funds in sufficient amounts which are reasonable and necessary in the discharge of its functions as administrator of said Trust Accounts.”

SEC. 2. A new Section 1 (g) is hereby incorporated in Department Circular No. 95-11-009, dated November 8, 1995, to read as follows:

“(g) The cost of administration of the aforesaid Trust Accounts in connection with the processing of the projects in electrification, livelihood and development and reforestation, watershed management, health and environment enhancement shall include all expenditures in an annual line item budget prepared by the EIAB and approved by the DOE Executive Committee.”

SEC. 3. All Department Circulars, Orders, Memoranda or other issuances thereof which are inconsistent with this Circular are hereby superseded, modified or amended accordingly.

SEC. 4. This Department Circular shall take effect fifteen (15) days after its complete

publication in a newspaper of general circulation.

November 19, 1999

**MARIO V. TIAOQUI**  
Secretary

**REPUBLIC OF THE PHILIPPINES**  
**COMMISSION ON AUDIT**  
Commonwealth Avenue, Quezon City, Philippines

**COA DECISION No. 2002-240**

***RE: Petition for Review of the decision of the Director, National Government Audit Office I, directing the treatment of trust receipt interest income as accruing to the General Fund for deposit to the Bureau of the Treasury***

---

**PREFATORY STATEMENT**

This is a Petition for Review of NGAO I Decision No. 2002-007 dated February 22, 2002, which directed the Department of Energy (DOE) to recognize as income interest earned from trust deposits collected from energy source developer or owner of generating facilities, record the same in the books of accounts and remit the proceeds to the Bureau of the Treasury (BoT) pursuant to existing budget, accounting and auditing rules and regulations.

**ANTECEDENT FACTS**

Records disclose that on January 13, 1999, the Auditor, DOE issued Audit Observation Memorandum (AOM) No. 99-01 for the failure of the agency to recognize as income the interest earned from the Trust Receipts invested/ deposited with various financial institutions amounting to P 52,932,561.10 as of November 30, 1998. Likewise, the agency failed to remit the said interest to the BoT as required under Section 5.1.2 of

Joint Department of Finance-Department of Budget Commission on Audit Circular No. 9-81, Section 5 of the General Appropriations Act of 1998 and Section 65 of Presidential Decree No. 1445 (State Audit Code of the Philippines).

It appears that the Trust Fund was created pursuant to Section 5 (i) of Republic Act No. 7638, the DOE Charter, which provides as follows:

“Sec. 5. Powers and Functions – The Department shall have the following powers and functions:

“ x x x

“ (i) Devise ways and means of giving direct benefit to the province, city or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-facility x x x”

and by Energy Regulation No. 1-94 issued on May 24, 1994 which mandated the energy resource developer or owner of generating facilities to set aside one-centavo per kilowatt hour on electricity sales as benefits to be allocated to the host local government units (LGUs) for electrification, development and livelihood, reforestation, watershed management, health and/or environment enhancement. Further, Department Circular No 95-11-009 dated November 8, 1995 expressly provided that interest earned from the trust accounts shall be for the benefit of the Trust. The scheme was devised in a summit meeting participated by various government and private sectors where the parties agreed to the propositions later embodied in the above issuances.

The then Secretary, DOE, explained that Section 65 of P.D. No 1445 admits an exception to the general rule that income shall accrue to the General fund by providing thus:

“Sec. 65. – Accrual of income to unappropriated surplus of the General Fund. (1) Unless otherwise specifically provided by law, all income accruing to the agencies by virtue of the provisions of law, orders and regulations, shall be deposited in the National Treasury or in any duly authorized government depository, and shall accrue to the unappropriated surplus of the General Fund of the Government.

(2) Amounts received in trust and from business-type activities of government may be separately recorded and disbursed in accordance with such rules and regulations as may be determined by a Permanent Committee composed of the Secretary (Minister) of Finance as Chairman, and the Commissioner of the Budget and the Chairman, Commission on Audit, as members.”

Moreover, since R.A. No. 7638 is a special law whereas P.D. No. 1445 is a general law, the provision of the former allowing the Department to devise ways and means to give direct benefit to the host LGUs should prevail over that of the latter. Besides, the Trust is deemed owned by the Agency which, pursuant to Item 2.2.4 of Joint DOF-DBM-COA Circular No. 1-97 dated January 2, 1997, is exempted from being transferred to the National Treasury, it follows that the accessory interest should also be owned by the Agency.

Aggrieved by the NGAO I decision, Petitioner in the instant Petition for Review reiterated the view that the phrase “unless otherwise provided by law” in both Joint Circular No. 9-81 and P.D. No 1445 is significant in that it shows that the recording of any income or interest earnings as income and remittance of the same to the BoT are not absolute and are subject to exceptions as may be provided by law. Such law is the above-cited provision of Section 5 (i) of R.A. No. 7638 as implemented by the issuances of the DOE on the matter. It cited the Supreme Court discussion on the nature of a trust fund in the case of *Government vs. China banking Corporation*, 54 Phil. 845, as follows:

“While it is true that the Postal Savings Bank is a division of the Department of Commerce and Communications of the Philippine Government, and although the board of directors of said bank is made up of government officials, still, property acquired by said bank is its own particular property, and its reserve fund is not revenue fund in the sense of Section 614 of the Revised Administrative Code but a trust fund to be used for no other purpose than to meet deficits in those years after its establishment in which earnings of the Bank are not sufficient to pay the expenses of the Bank.”

The Petitioner likewise asserted the rationale for the creation of the Trust which are to recognize and provide recompense for the contributions made by the pertinent LGUs in hosting within their respective territorial jurisdictions the energy source and/or energy-generating facility through which the rest of the country is energized and to lessen the conflict of rights among host LGUs, the community and people affected, the energy resource developers or power producers and the appropriate agencies of the national government and to promote harmony and cooperation among them. Therefore, the holding of the Trust and its interest for the benefit of the LGUs concerned is within the spirit and intent of the law.

### ISSUE

Whether or not the earnings of the Trust contributed by owners of energy source and energy-generating facility are excluded from the requirement of accrual to the General Fund and remittance to the Bureau of the Treasury.

### DISCUSSION

The phrase “trust funds” is defined in section 628 of the Revised Administrative Code as that which have officially come into the possession of the Government or of a government officer as trustee, agent or administrator, or which have been received as a guaranty for the fulfillment of some obligation. Thus, in the instant case, the Trust came into existence by virtue of contributions of private entities for the benefit of LGUs for the purpose of recompensing them for hosting within their respective territorial jurisdictions the energy source or facility through which the rest of the country is energized and to lessen the conflict of rights among those concerned. It was not a creation of law but a mutual agreement between the DOE and the private entity owners in compliance with the mandate to the DOE to devise ways and means to benefit the LGUs involved.

There is no question that the Trust involve public funds as it officially came into the possession of the DOE but the character of being public does not ipso facto make the Trust subject to the general laws on the treatment and disposition of the fund by the government. The fact is that the fund was raised not as a form of exaction by law but by voluntary contribution by private entities which entrusted the same to the Department for the specific purpose of benefiting the LGUs. As correctly explained by the Petitioner, the requirements of accounting and remittance of income of trust funds are not absolute but admits certain exception as when the law so provides. That law, in the instant case, is Section 5 (i) of R. A. No. 7638 which clearly authorizes the DOE to “devise ways and means of giving direct benefit” to the LGUs. The administrative issuances of that Agency which partakes the nature of “little laws” to implement the intent of the law making body of giving direct and immediate benefit to the remote areas needing electrification for the good not only of the area benefited but for the whole country as well, albeit indirectly, is a reasonable exercise of its delegated quasi-legislative function.

This intent of Congress is all the more manifest when it enacted the Electric Power Industry Reform Act of 2000 (R.A. 9136) which substantially incorporated the beneficial provision of the contents of the DOE circulars. More so as the law’s implementing rules and regulations approved by the Joint Congressional Power Commission provided in Section 4 (b), Rule 29 that:

“All interest earnings from Electrification Fund (EF), Development and Livelihood Fund (DLF), and Reforestation, Watershed Management, Health and/or Environment Enhancement Fund (RWMHEEF) shall be set aside into one trust account to be utilized for the electrification projects of the communities in the following order

of priority:

Direct host barangays and host municipality/ies or city/ies with sufficient accrued DF; xxx”

### COMMISSION’S RULING

Premises considered, the instant petition is granted. The DOE is hereby allowed to directly apply the Trust and its income for the purpose for which it was created. In view, however, of the unique and special circumstances obtaining in the instant case, the same shall

not be used as a precedent in the cases of agencies administering trust funds but each case shall be treated separately.

**GUILLERMO N. CARAGUE**

Chairman

**RAUL C. FLORES**

Commissioner

**EMMANUEL M. DALMAN**

Commissioner

## DEPARTMENT CIRCULAR NO. 2000-10-011

PROVIDING REVISED RULES AND PROCEDURES TO IMPLEMENT ELECTRIFICATION PROGRAM FUNDED THROUGH ENERGY REGULATIONS NO. 1-94, IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE DEPARTMENT OF ENERGY ACT

---

**WHEREAS**, Energy Regulations (E.R.) No. 1-94 promulgated by the Department on 24 May 1994, prescribed the provision of direct benefits to pertinent Local Government Units (LGUs) hosting energy generating facilities and/or energy resource development projects within their jurisdiction pursuant to Section 5 (i) of Republic Act (R.A.) No. 7638;

**WHEREAS**, Department Circular (D.C.) No. 95-11-009 and D.C. 96-08-009, issued by the Department on 08 November 1995 and 09 August 1996, respectively, prescribed the guidelines and procedures for granting of financial benefits required under E.R. 1-94;

**WHEREAS**, D.C. No. 2000-03-003 issued on 17 March 2000, amended certain provisions of E.R. 1-94 and its attendant rules and procedures;

**WHEREAS**, pursuant to the policy of the state to ensure total electrification of the country, the Department seeks to achieve full electrification of all barangays by year 2004 as

embodied in its Rural Electrification Program (REP);

**WHEREAS**, in the interest of exigency of public service and to further accelerate the implementation of the REP to ensure the implementation and completion of the project on time, there is an urgent need to institute summary procedures in the approval and subsequent release of the electrification fund to the franchised distribution utility or project implementor, as the case may be;

**WHEREFORE**, premises considered, the Department hereby adopts and promulgates the following summary procedures in the utilization and implementation of electrification projects funded under E.R. 1-94:

SECTION 1. *Evaluation and Approval of Electrification Projects.* –

(a) Priority shall be given to unenergized areas of the following:

- (i) Official Resettlement Areas;
  - (ii) Host Barangays; and
  - (iii) Host Municipalities/Host Cities.
- (b) After electrification has reached the municipal or city level, the electrification fund of each energy generating facility in the same province or region, as the case maybe, shall be combined to finance unenergized areas in the host province or host region, as the case may be;
- (c) The National Electrification Administration (NEA) shall provide support to the Department in the identification of electrification projects including submission by the concerned franchised distribution utility of the staking sheets or single line diagram, and cost estimates;
- (d) All concerned franchised distribution utilities shall submit to the Department the corresponding staking sheets or single line diagram detailing the design of the project including the estimated cost estimates and completion date of the project; and
- (e) The Department, with the assistance of the NEA, shall evaluate initial documents submitted by the franchised distribution utilities and the reasonableness of the cost estimates.

**SEC. 2. Release of Funds and Project Implementation. –**

- (a) A Memorandum of Agreement (MOA) shall be forged among the Department, relevant franchised distribution utility or project implementor, power producer and/or energy resource developer, NEA and the concerned LGU/s to effect the implementation of the project/s. In cases where the electrification project lacks necessary information and documentation, the MOA shall stipulate specific time frame or date

for the franchised electric distribution utility to comply with the submission, among others, cost estimates, proposed work program, target date of project completion;

- (b) The Department shall make the necessary fund allocation and forthwith release the funds to the franchised distribution utility or project implementor within fifteen (15) days upon accomplishment of the MOA;
- (c) For projects to be undertaken by contract, initial release of fund shall be equivalent to fifteen percent (15%) of the total project cost. Subsequent release of fund balance shall be based on the result of the qualified lowest bid cost;
- (d) For projects to be undertaken by administration, total project cost shall be released upon accomplishment of the MOA;
- (e) The NEA or other government agencies shall ensure compliance by the franchised distribution utility or project implementor to the provisions of the MOA to facilitate post-audit by the Department upon completion of the projects;
- (f) All electrification projects shall be completed or energized consistent on the time or date specified in the MOA;
- (g) All electrification projects shall be undertaken in a least-cost manner. The concerned franchised distribution utility or project implementor may either adopt the conventional line design or utilize indigenous and renewable energy sources to energize the area; and
- (h) In case where the electrification project is implemented by entity other than the relevant franchised distribution utility, the project implementor shall turn-over said project to the relevant franchised

distribution utility for operation and maintenance.

SEC. 3. *Post Project Implementation.* –

- (a) The franchised distribution utility or project implementor shall, in writing, inform the Department of the project completion along with the submission of the pertinent documents, such as but not limited to, as-built staking sheets, documents detailing costs incurred and the number of potential households connected or to be connected, and completion date of the project;
- (b) In the event that the franchised distribution utility or project implementor incurred additional cost in implementing the project, recovery shall be allowed subject to the following:
  - (i) The additional or extra works and/or change order are necessary to complete the project;
  - (ii) Submission of Certificate of Completion and Certificate of Acceptance from the franchised distribution utility if the project shall be undertaken by contract. If the project shall be undertaken by the administration of franchised distribution utility, a Certificate of Completion is sufficient;
  - (iii) Audit report detailing the additional or extra works done;
  - (iv) All provisions in the MOA have been strictly complied with, in accordance with the commitment of the franchised distribution utility;
  - (v) Electrification project is completed within the specified time frame or date specified in the MOA; and

- (vi) Availability of electrification fund from the relevant energy generating facility.

*Provided, however,* That the amount to be recovered shall not exceed 20 percent (20%) of the total estimated project cost as specified in the MOA.

- (c) The Department shall conduct audit of the expenses incurred as well as technical inspection of the facilities installed. Accordingly, the financial and technical teams of the Department shall prepare their respective reports detailing their respective findings of the project completed. The as-built staking sheets and documents submitted by the franchised distribution utility shall serve as reference or initial basis for audit.

SEC. 4. *Other Provisions.* –

- (a) This Circular shall be amended, replaced or repealed in due time as may be deemed necessary by the Department to rationalize the implementation of the REP of the Department.
- (b) This Circular shall only apply to barangay electrification projects of the Department, utilizing electrification fund and interest earnings under E.R. 1-94.
- (c) All previous pertinent orders, resolutions or memorandum circulars inconsistent herewith are hereby superseded, modified or amended accordingly.
- (d) This Circular shall take effect immediately.

Fort Bonifacio, Taguig, Metro Manila, 02 October 2000.

**MARIO V. TIAOQUI**  
Secretary



## EXECUTIVE ORDER NO. 119

### RESTRUCTURING PROGRAM FOR ELECTRIC COOPERATIVES

---

**WHEREAS**, the Congress of the Philippines enacted Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), for the purpose of restructuring the electric power industry, including the restructuring of electric cooperatives (ECs);

**WHEREAS**, Section 60 of EPIRA provides:

*“Sec. 60. Debts of Electric Cooperatives. – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corporation in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of the debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations shall repay PSALM Corp. the total debts including accrued interest thereon.”* (Underscoring supplied);

**WHEREAS**, Rule 31 of the Implementing Rules and Regulations of EPIRA, as approved by the Joint Congressional Power Commission (JCPC) and promulgated by the Department of Energy (DOE), reiterates that said

outstanding financial obligations of ECs shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM) in accordance with the program approved by the President of the Philippines.

**WHEREAS**, Rule 31 of the Implementing Rules and Regulations of EPIRA likewise defines the outstanding financial obligations which shall be assumed by PSALM as those incurred by ECs “for the purpose of financing the Rural Electrification Program”;

**WHEREAS**, the assumption by PSALM of such outstanding financial obligations of ECs shall result in the reduction in the rates of ECs commensurate with the resulting savings due to the removal of the amortization payment on said loans;

**WHEREAS**, Section 58 of EPIRA mandates the National Electrification Administration (NEA) to strengthen the technical capability and financial viability of rural ECs as electric utilities, and to prepare said ECs to operate and compete in the deregulated electricity market, specifically in an environment of open access and retail wheeling;

**WHEREAS**, the assumption by PSALM of the outstanding financial obligations of ECs incurred for the purpose of financing the Rural Electrification Program entails substantial government support that must come hand in hand with meaningful and lasting reforms, both mandated and self imposed, among the ECs, for the purpose of achieving reliable, secure and cheaper electricity for all consumers, particularly in the rural areas, in line with the declared policies in EPIRA;

**WHEREAS**, DOE, Department of Finance (DOF), NEA and PSALM, have recommended a

program for the restructuring of ECs through the assumption by PSALM of the outstanding financial obligations of ECs incurred for the purpose of financing the Rural Electrification Program, with a view to reducing the spiraling cost of electricity (hereinafter referred to as the “Program”);

**NOW, THEREFORE,** I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law and upon the recommendation of DOE, DOF, NEA and PSALM, do hereby order:

SECTION 1. *Declaration of Policy.* – The Program adheres to the following declared policies in EPIRA:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and ensure the competitiveness of Philippine products in the global market;
- (d) To encourage the efficient use of energy and other modalities of demand side management; and
- (e) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

SEC. 2. *Coverage.* – As specified under Section 60 of EPIRA, the Program for PSALM to assume the outstanding financial obligations incurred by ECs covers only those obligations incurred for the purpose of financing the Rural Electrification Program. The Implementing Rules and Regulations of EPIRA, as approved

by JCPC and promulgated by DOE, defines “Financing for Rural Electrification” as referring to loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution, generation, and subtransmission facilities for the purpose of supplying electric service,” and those loans for the restoration, upgrading and expansion of such facilities, in areas which are considered rural at the time of the grant of such loans (hereinafter referred to as ‘Rural Electrification Loans”).

Thus, the Program shall comprise the following:

- (a) Financial, institutional, technical and managerial restructuring of ECs, pursuant to Section 58 of EPIRA;
- (b) Assumption by PSALM of Rural Electrification Loans, pursuant to Section 60 of EPIRA;
- (c) Amortization of payments to NEA and/or other government creditor agencies for Rural Electrification Loans assumed by PSALM, pursuant to Section 60 of EPIRA; and
- (d) Reorganization of NEA to enable it to perform its additional mandates under Section 58 of EPIRA, and in accordance with Section 5 (a) (5) of Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

SEC. 3. *NEA Reorganization Plan.* – In order to better achieve the objectives of EPIRA and to suit the organizational staffing pattern of NEA to its additional mandates therein, NEA shall submit, within thirty (30) calendar days from the effectivity of this Executive Order, a reorganization plan containing NEA’s redefined institutional, technical and financial functions for the approval of DOE and the Department of Budget and Management (DBM).

Upon approval of NEA's reorganization plan, DBM shall release the necessary funds to implement the reorganization plan.

DOE shall monitor the implementation of NEA's reorganization plan and shall submit a report thereon to the Office of the President.

SEC. 4. *EC Restructuring.* – Within thirty (30) calendar days from the effectivity of this Executive Order, NEA shall likewise submit to DOE a plan of action: (a) to implement and comply with Section 58 of EPIRA, specifically to prepare ECs to operate and compete under the deregulated electricity market, and to strengthen the technical and managerial capability and financial viability of rural ECs; and (b) to ensure full compliance with Section 5 of this Executive Order.

SEC. 5. *Assumption of Rural Electrification Loans.* – To ensure that the implementation of the Program is in accordance with law which requires that only Rural Electrification Loans shall be assumed by PSALM, and to further protect consumer welfare, the assumption of Rural Electrification Loans shall be effective upon compliance with the following terms and conditions:

- (a) Each Rural Electrification Loan must be (a) duly recorded in the books of NEA and/or the corresponding creditor government agencies; (b) validated by the Commission on Audit; and (c) confirmed by the concerned EC as due and outstanding.
- (b) Each Rural Electrification Loan shall be audited for verification purposes by PSALM, in accordance with generally accepted accounting and auditing practices.
- (c) ERC shall have approved the reduction in the ECs' rates commensurate with the resulting savings due to the removal of the amortization payments on the Rural Electrification Loan/s. At all times,

the assumption by PSALM of the Rural Electrification Loan/s shall take effect only upon such ERC approval, given that all other terms and conditions stated herein have been complied with.

- (d) Each EC must be current and continue to be current in the payment of its obligations to the National Power Corporation (NPC) to be eligible for the assumption by PSALM of its Rural Electrification Loan/s. In the event that an EC is not current in the payment of its obligations to NPC, such EC must first submit to NEA a duly executed agreement with NPC, containing a sustainable payment arrangement acceptable to NPC, before such EC may be eligible for the assumption by PSALM of its Rural Electrification Loan/s.
- (e) Each EC shall at all times comply with all NEA policies governing the ECs' relationship with NEA, pursuant to Presidential Decree No. 269, as amended by Presidential Decree No. 1645, and its implementing guidelines, rules and regulations.
- (f) Each EC shall cooperate with NEA in order for NEA to effectively prepare them for operating and competing under the deregulated electricity market within five (5) years from the effectivity of EPIRA, specifically in an environment of open access and retail wheeling, as envisioned and mandated under Section 58 of EPIRA.
- (g) Within thirty (30) calendar days from the effectivity of this Executive Order, the NEA Board shall issue guidelines for the submission by ECs of a Performance Improvement Program (PIP) and/or a Rehabilitation and Efficiency Plan (REP).

Consistent with Section 10 of Presidential Decree No. 269, as amended by Presidential Decree No. 1645, said guidelines shall include preventive and/

or disciplinary measures, as may be warranted, prior to the assumption by PSALM of the Rural Electrification Loan/s of the concerned EC.

The PIP and/or REP shall cover institutional, technical, financial and managerial reforms, including financial restructuring, needed to achieve prescribed levels of efficiency, including but not limited to, system losses, collections, electric and customer service, cost control, tariff rate competitiveness, and adequacy in capital and/or financing structure. The PIP and/or REP shall provide for specific yearly targets and shall cover at least the five (5) year period prescribed under Section 60 of EPIRA.

- (h) Within thirty (30) calendar days from the issuance of such PIP/REP guidelines, each EC shall submit its PIP and/or REP for NEA's approval. NEA shall approve or disapprove the PIP and/or REP of each electric cooperative within the period prescribed in its guidelines.

SEC. 6. *Reduction in EC Rates.* – Pursuant to Section 60 of EPIRA, the ERC shall ensure a reduction in the rates of ECs commensurate with the savings due to the removal of the amortization payments on their Rural Electrification Loan/s assumed by PSALM pursuant to this Executive Order. For this purpose, NEA shall assist ECs in their rate formulation and application to ERC.

SEC. 7. *Assumption and Payment by PSALM of Rural Electrification Loans.* – Pursuant to Section 60 of EPIRA, PSALM shall assume all Rural Electrification Loans upon compliance by the concerned EC with Section 5 of this Executive Order, and thereupon, such EC shall cease to be a debtor of NEA or of other creditor government agencies.

Thereafter, PSALM and NEA or other creditor government agencies shall enter into contracts and/or agreements, necessary and

proper, to undertake the payment of the assumed Rural Electrification Loans through an amortization schedule to be agreed upon between PSALM on the one hand, and NEA or other creditor government agencies, on the other. Where necessary, such contracts and/or agreements may include mutual stipulations on the modification and/or amendments of existing contracts of mortgage and other security between ECs and NEA or other creditor government agencies. *Provided, however,* That any such contracts of mortgage and other security with respect to the Rural Electrification Loans assumed by PSALM shall not be released by NEA and/or other creditor government agencies without the written consent of PSALM.

SEC. 8. *Revocation.* – The assumption of PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order or if within five (5) years from the assumption by PSALM of the Rural Electrification Loan/s, an EC transfers ownership or control of its assets, franchise or operations, as provided under Section 60 of EPIRA.

Upon revocation, such EC must repay PSALM the total Rural Electrification Loan/s, including interest thereon, assumed by PSALM: *Provided, however,* That with the consent of NEA, an EC may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement of management system for needed rehabilitation and modernization programs: *Provided, further,* That such loan or financing agreements shall not involve any permanent transfer or control of the assets, franchise and operations of such EC: *Provided, finally,* That DOE and NEA shall jointly issue the necessary guidelines to protect the member-consumers of ECs in situations involving such loan or financing agreements.

SEC. 9. *Separability Clause.* – In the event that any of the provisions of this Executive Order is declared unconstitutional with finality by a

court of competent jurisdiction, the validity of the other provisions shall not be affected by such declaration.

SEC. 10. *Effectivity.* – This Executive Order shall take effect on the fifteenth (15th) day

from the date of its publication in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 28th day of August, in the year of our Lord, Two Thousand and Two.

## DEPARTMENT CIRCULAR NO. 2004-06-007

PROMOTING INVESTMENT MANAGEMENT CONTRACTS AS ONE MEASURE IN EFFECTING GREATER PRIVATE SECTOR PARTICIPATION IN THE MANAGEMENT AND OPERATION OF RURAL ELECTRIC COOPERATIVES PURSUANT TO SECTION 37 OF REPUBLIC ACT NO. 9136 AND ITS IMPLEMENTING RULES AND REGULATIONS

**WHEREAS**, under Section 2 of the Republic Act 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” it is declared policy of the State to:

- (i) ensure and accelerate the total electrification of the country;
- (ii) ensure the quality, reliability, security and affordability of the supply of electric power; and
- (iii) enhance the inflow of private capital and broaden the base of the power generation, transmission and distribution sectors.

**WHEREAS**, pursuant to Section 37 (e) (i) and (ii) of EPIRA and Section 1, Rule 3 of the Implementing Rules and Regulations of EPIRA or “EPIRA-IRR,” the Department of Energy (DOE) is mandated to encourage private sector investments in the electricity sector, and to facilitate and encourage reforms in the structure and operation of distribution utilities for greater efficiency and lower costs;

**WHEREAS**, pursuant to Section 37 (e) (p) of EPIRA and Rule 3 of EPIRA-IRR, the DOE has the responsibility to formulate such rules and regulations as may be necessary to implement the objectives of EPIRA;

**WHEREAS**, pursuant to Section 43 of EPIRA, the Energy Regulatory Commission (ERC) shall, *inter alia*, promote competition, encourage market development, and ensure customer choice in the restructured electricity industry;

**WHEREAS**, pursuant to Section 58 (b) of EPIRA and Section 3, Rule 3 of EPIRA-IRR, the National Electrification Administration (NEA) is mandated to develop and implement programs to strengthen the technical capability and financial viability of rural electric cooperatives;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby promulgates the following guidelines to promote private sector partnership and participation in the operations of rural electric cooperatives or “ECs” toward sustainable financial viability, enhance ECs access to private capital, and to improve services to electricity end-users.

### SECTION 1. *Definition of Terms.* –

Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- (a) “*Department of Energy*” or “*DOE*” refers to the government agency created

pursuant to Republic Act No. 7638 whose expanded functions are provided under EPIRA;

- (b) *“Electric Cooperative”* or *“EC”* means a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided under EPIRA;
- (c) *“ERC”* means the Energy Regulatory Commission established under Section 38 of EPIRA;
- (d) *“Investor-Operator”* may include, without limitation, private firms, nongovernmental organizations, cooperatives, distribution utilities, generation companies, or subsidiaries of distribution utilities or generation companies, or combinations thereof to embrace such groupings as joint ventures, consortia, and partnerships;
- (e) *“Investment Management Contract”* or *“IMC”* refers to one of the modalities of private sector participation in the management and operation of electric cooperatives further described in Section 3 of this Circular;
- (f) *“LGU Guarantee Corporation”* or *“LGUGC”* refers to the entity appointed by the DOE, to manage a credit guarantee program to enhance EC credit worthiness;
- (g) *“Memorandum of Agreement”* or *“MOA”* means the agreement to be entered into and executed by and between the DOE, NEA and an EC which sets out the terms and conditions of the process to be observed in assisting the EC in establishing the partnership between the private sector participant and the EC;
- (h) *“National Electrification Administration”* or *“NEA”* refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth under EPIRA; and

- (i) *“Person”* refers to a natural or juridical person, as the case may be.

## SEC. 2. *Declaration of Policy.* –

It is hereby declared the policy of the DOE for ECs to achieve the readiness to compete in the restructured and competitive electricity market. Towards this end, the DOE is implementing, supporting and promoting programs and projects to urge ECs to undertake structural and operational reforms with a view to achieving greater efficiency and lower costs, through collaboration with the private investor-operator/s to gain access to private sector capital and management expertise.

The DOE recognizes that reform options ECs may consider include, but are not limited to, the following:

- (a) Collaborative efforts with private sector participants, such as an investor-operator, under IMCs;
- (b) Amalgamations, either through a merger, consolidation or regional joint management arrangements; and
- (c) Conversion into Stock Cooperatives under Cooperative Development Authority (CDA) or Stock Corporations under the *Corporation Code*.

As regards IMCs, it is hereby further declared the policy of DOE to support only IMC transactions concluded through a transparent and competitive bidding process, where the resulting IMC offers the EC an arrangement which is transparent, long-term, competitive, comprehensive, and demonstrates sustainable solution for the efficient operation of the EC.

It is the stated policy of DOE that it will provide all necessary support to ECs interested and/or participating in the implementation of IMCs.

### SEC. 3. *Essential Features of the IMC.* –

The IMC, as duly endorsed by the DOE, is a contractual relationship between a willing EC and a willing investor-operator, for the infusion of risk capital and provision of management expertise by the latter to the former, to provide for sustainable EC recovery based on improved efficiency, lower costs and systems losses reduction.

The essential features of the IMC are:

- (a) The EC remains the duly authorized distribution utility; hence, members of the EC, through the EC Board, shall continue to exercise the rights and responsibilities under its franchise. It shall continue to be regulated by the ERC.
- (b) The EC will continue to function and act through its Board, which shall retain critical residual powers under the IMC, such as, but not limited to:
  - (i) monitoring performance of the investor-operator to ensure compliance with agreed performance standards and deliverables; and
  - (ii) working with the investor-operator to approve and implement an investment program consistent with achieving on-going compliance with the Distribution Code.
- (c) The EC will retain ownership of and strategic control of its assets, as well as control over setting the standards of service to its customers.
- (d) To ensure that the EC is adequately protected and reasonably assured of sustainable recovery, the investor-operator will only obtain a return on investment and so remunerated where systems loss reduction is achieved and costs are considerably decreased, through an equitable profit-sharing and/ or lease option scheme.

### SEC. 4. *Issuance of NEA Memorandum.* –

As an expression of its support for and endorsement of IMC, the NEA shall, within thirty (30) days from the promulgation of this Circular, issue a memorandum substantially setting out the following:

- (a) Endorsement of the IMC, as defined in Section 1 (e) hereof and with the essential features set out in Section 3 of this Circular, to qualified ECs. It is acknowledged that the IMC has the dual purpose of providing ECs with access to capital, they could not otherwise obtain, and improving performance incentives.
- (b) Recognition of the participation of the DOE-appointed Transaction Advisor (as provided in Section 5 hereof) in the implementation of IMCs, to ensure that a transparent and competitive bidding process is undertaken to tailor the IMC to the needs of participating qualified ECs and to match a suitable investor-operator with and EC.
- (c) Encouragement by NEA for ECs to consider the IMC, and in doing so, to further avail the services of the Transaction Advisor in undergoing the IMC process.

Towards this end, ECs are further advised to enter into a Memorandum of Agreement (MOA) with the DOE and NEA which shall be followed in qualifying an EC and facilitating the IMC transaction with the investor-operator. The MOA sets out the terms and conditions of the IMC process.

### SEC. 5. *Guided Transaction Process.* –

To facilitate a transparent and competitive bidding process, the DOE has appointed a Transaction Advisor. The Transaction Advisor has been engaged to act as the transaction process guide and independent broker between the EC and an investor-operator, to ensure that a transparent and competitive bidding process is in place and is undertaken

to tailor the IMC in a manner suitable to the EC, while at the same time making the transaction attractive to potential investor-operator/s.

DOE has instructed the Transaction Advisor to develop a best-practice model IMC, which protects and advances the interests of EC and its members.

ECs desirous of exploring the IMC option are strongly encouraged to avail themselves of the services of the Transaction Advisor, duly appointed by the DOE. Interested ECs are thus invited to enter into a MOA with DOE and NEA, which will set the terms for the support that each EC will receive at various stages of the IMC transaction process.

**SEC. 6. *Support for and Regulation of ECs Under IMCs.* –**

The end-users shall be protected from any rate increase arising from the IMC transaction. On the other hand, the DOE is cognizant of the need for investor-operator to achieve the required returns on their investments once the target EC performance is met and operating surpluses are realized. Investor-operators need to be protected from the risk that such surpluses are dissipated through regulated rate reductions. Accordingly, the DOE and ERC will consult and petition the ERC for development of a special regulatory regime for ECs under private sector partnerships, under which ECs can opt into a locked-in tariff path. Such tariff path will provide certainty both to consumers and potential investor-operators.

The DOE has also appointed the LGU Guarantee Corporation (LGUGC) to manage a credit guarantee program designed to

enhance EC credit worthiness. This program, funded by the Global Environment Facility and the World Bank, aims to provide partial credit guarantees to local Philippine banks (financial institutions) for loan to ECs or investor-operators. The DOE shall encourage LGUGC to support the implementation of IMCs, by recognizing such contracts as significant contributions to reducing credit risk.

**SEC. 7. *Repealing Clause.* –**

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

**SEC. 8. *Saving Clause.* –**

- (a) If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.
- (b) The implementation of this Circular shall not exempt the parties from complying with applicable laws and government rules and regulations.

**SEC. 9. *Effectivity.* –**

This Circular shall take effect within fifteen (15) days upon publication in newspaper of general circulation.

**VICENTE S. PÉREZ, JR.**  
**Secretary**

Fort Bonifacio, Taguig  
Metro Manila, Philippines  
18 June 2004



## ERC RESOLUTION NO. 22, Series of 2006

A RESOLUTION PROMULGATING THE RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED UNVIABLE BY THE DEPARTMENT OF ENERGY

---

**WHEREAS**, Section 43 (t) Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), authorizes the Energy Regulatory Commission (ERC) to perform such “regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry...;”

**WHEREAS**, on 16 December 2005, the ERC posted the “Proposed Guidelines for the Regulation of Qualified Third Parties Performing Missionary Electrification in Areas Declared Unviable by the Department of Energy” (Proposed Guidelines) on its official website ([www.erc.gov.ph](http://www.erc.gov.ph)) for comments;

**WHEREAS**, on 16 January 2006, the ERC issued a Notice of Public Consultations which indicated the scheduled dates and venues for the public consultations on the Proposed Guidelines, as follows:

Date	Venue
30 January 2006	General Santos City
9 February 2006	Iloilo City
27 February 2006	Palawan

**WHEREAS**, the ERC conducted public consultations on the dates and venues specified above;

**WHEREAS**, in the interest of hearing additional comments and opinions on the Proposed Guidelines, the ERC issued a Notice dated 17 February 2006, scheduling two (2) additional public consultation dates in the following venues:

Date	Venue
9 March 2006	Tuguegarao City
20 March 2006	Digos City

**WHEREAS**, the ERC received two (2) written comments on the Proposed Guidelines and oral comments given during the scheduled public consultations and the same were considered in its deliberations on the Proposed Guidelines and the necessary revisions were made thereto;

**WHEREAS**, in accordance with its mandate under the EPIRA, after consideration of the various views and comments submitted and manifested by interested parties, and based on its own study and analysis, the ERC finds it appropriate to approve the Proposed Guidelines with the revisions adopted by the Commission, including the change in its title to the “Rules for the Regulation of Qualified Third Parties Performing Missionary Electrification in Areas Declared Unviable by the Department of Energy;”

**NOW, THEREFORE**, the ERC hereby RESOLVES, as it is hereby RESOLVED, to PROMULGATE the **RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED UNVIABLE BY THE DEPARTMENT OF ENERGY**, which is hereto attached.

Pasig City, 3 May 2006

**RODOLFO B. ALBANO JR.**

Chairman

**OLIVER B. BATULID**

Commissioner

**JESUS N. ALCORDO**

Commissioner

**RAUF A. TAN**

Commissioner

**ALEJANDRO Z. BARIN**

Commissioner

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

**RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED UNVIABLE BY THE DEPARTMENT OF ENERGY**

---

Pursuant to Section 59 (Alternative Electric Service for Isolated Villages) in relation to Section 70 (Missionary Electrification) and Section 34 (Universal Charge) of Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*” (“EPIRA”), and its Implementing Rules and Regulations (“EPIRA-IRR”), and cognizant of the policies of the Department of Energy (DOE) as expressed in DOE Department Circular DC2004-06-006 entitled “*Prescribing the Qualification Criteria for the Qualified Third Party*” and DOE Department Circular No. DC2005-12-011 entitled “*Prescribing the Guidelines for Participation of Qualified Third Parties (QTPs) for the provision of Electric Service in Remote and Unviable Areas, Pursuant to Sections 59 and 70 of the Electric Power Industry Reform Act and its Implementing Rules and Regulations*” for the promotion of rural electrification, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules for the regulation of Qualified Third Parties (QTPs) operating in Declared Unviable Areas by the DOE.

**ARTICLE I**

General Provisions

**Section 1. Purpose.** – These Rules shall establish the framework and procedure for:

- (a) Determining how ERC will quality and authorize electric service providers in unviable areas, consistent with Rule 14 (*Provision of Electricity by Qualified Third Parties*) of the EPIRA-IRR, and in pursuance of the State’s policies to ensure and accelerate the total electrification of the country and enhance the inflow

of private capital and participation of private sector in attendant risks, in the energization of remote and unviable areas of the country through Qualified Third Parties;

- (b) The issuance of the necessary permits required by the EPIRA for Qualified Third Parties to provide electricity service in Declared Unviable Areas; and
- (c) Setting the rates, subsidies and service standards for Qualified Third Parties.

Section 2. Definition of Terms. –

- (a) “**Authority to Operate**” or “**ATO**” refer to the authorization issued by the ERC to the QTP which shall constitute as the latter’s license to provide electricity and related services, including as necessary, generation of electricity in a specified QTP Service area;
- (b) “**Certificate of Compliance**” or “**COC**” refers to a certificate given to an Entity by the Energy Regulatory Commission to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of the EPIRA and Sections 4 and 5 of the EPIRA-IRR;
- (c) “**Delegated NPC-SPUG Area**” refers to an area not connected to the national grid transmission system where a New Power Provider (NPP) or NPPs act on behalf of NPC-SPUG in providing electric generation services and its associated power delivery systems;

- (d) **“Declared Unviable Area”** refers to an Unviable Area which the DOE has declared to be open for participation by Qualified Third Parties, in accordance with Section 59 of EPIRA and Section 3 of Rule 14 of the EPIRA-IRR, after the waiver thereof by the concerned Distribution Utility for inclusion in the DOE’s Qualified Third Party Program;
- (e) **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638;
- (f) **“Distribution Code”** or **“Code”** refers to the term defined in Section 4(m) of the EPIRA and Rule 4(y) of the EPIRA-IRR;
- (g) **“Distribution Utility”** or **“DU”** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA as defined in Section 4(q) of the EPIRA and Rule 4(cc) of the EPIRA-IRR;
- (h) **“Electric Cooperative”** or **“EC”** refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, as defined in Section 4 (r) of the EPIRA and Rule 4(ee) of the EPIRA-IRR;
- (i) **“Electricity Service”** refers to the service embodied in the QTP Service Contract duly endorsed by the DOE;
- (j) **“Energy Regulatory Commission”** or **“ERC”** refers to the independent, quasi-judicial regulatory agency created under Section 38 of EPIRA;
- (k) **“Entity”** refers to any person or body corporate, and may include a cooperative or a local government unit;
- (l) **“EPIRA”** refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;
- (m) **“EPIRA-IRR”** refers to the Implementing Rules and Regulations of the EPIRA;
- (n) **“Full Cost Recovery Rate”** or **“FCRR”** refers to the rate, expressed in Peso per kilowatt-hour, that recovers the full efficient costs of providing Electricity Service sufficient to enable the Qualified Third Party to operate viably;
- (o) **“Missionary Electrification”** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels, including the provision of power generation and its associated power delivery systems in areas that are not connected to the national grid transmission system;
- (p) **“Missionary Electrification Subsidy”** or **“ME Subsidy”** refers, for purposes of these Rules, to the fund duly approved by the ERC to cover the difference between the FCRR and the Subsidized Approved Retail Rate of the Qualified Third Party sourced from the Universal Charge for Missionary Electrification;
- (q) **“National Power Corporation – Small Power Utilities Group”** or **“NPC-SPUG”** refers to the functional unit of NPC created to pursue missionary electrification function as defined in Section 4(tt) of the EPIRA and Rule 4(bbbb) of the EPIRA-IRR;
- (r) **“Qualified Third Party”** or **“QTP”** refers to an alternative electric service provider that meets the standards in and is chosen in accordance with DOE Circular No. 2005-12-011, and is duly qualified and authorized by the ERC to serve Declared Unviable Areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR;
- (s) **“QTP Service Area”** refers to the geographic area corresponding to the Unviable Area/s where QTP shall be authorized to provide Electricity Service as stipulated in the QSC;

- (t) **“QTP Service Contract”** or **“QSC”** refers to the contract entered into by NPC and the QTP, duly approved by the ERC, defining the QTP’s responsibilities in undertaking missionary electrification in Declared Unviable Areas. This contract shall set the terms and conditions by which the QTP shall provide the Electricity Service, and shall include the tariff levels, other electric service charges, and the applicable performance and service standards to be met by such QTP;
- (u) **“Selection Process”** refers to the formal steps undertaken by the DOE to choose, in accordance with the criteria set forth in DOE Circular No. 2005-12-011, the prospective QTP that can apply for authorization with the ERC for the provision of Electricity Service in a Declared Unviable Area;
- (v) **“Subsidized Approved Retail Rate”** or **“SARR”** refers to the rate, expressed in Peso per kilowatt-hour, that the ERC has determined to be the maximum that an end-user in a Declared Unviable Area shall pay for the Electricity Service provided by a QTP in that Declared Unviable Area;
- (w) **“Subsidy and Disbursement Agreement”** or **“SDA”** refers to the agreement entered into between the QTP and NPC setting forth the terms and conditions governing the QTP’s availment of the UC-ME subsidy to allow it to viably serve the QTP Service Areas;
- (x) **“Retail Rate”** refers to the total price paid by end-users consisting of the charges for generation, transmission, and related ancillary services, distribution, supply and other related charges for electricity services as defined in Rule 4(uuu) of the EPIRA-IRR;
- (y) **“Universal Charge”** or **“UC”** refers to the charge, if any, imposed for the recovery of stranded cost and other purposes pursuant to Section 34 of the EPIRA as defined in Section 4(ddd) and 34 of the EPIRA and Rule 4(rrr) and Rule 18 of the EPIRA-IRR;
- (z) **“Universal Charge for Missionary Electrification”** or **“UC-ME”** refers to the portion of the Universal Charge which is designated for Missionary Electrification;
- (aa) **“Universal Area”** refers to a geographical area within the franchise area of a DU where the immediate extension of distribution line is not feasible, as defined by Rule 4(ssss) of the EPIRA-IRR. For purposes of these Rules, Unviable Areas shall also include those areas which are currently served by the concerned DU but are deemed unviable and are subsequently declared by the DOE as open for participation by Qualified Third Parties; and
- (bb) **“Waiver Contract”** refers to the contract entered into between the DU and the QTP pursuant to Rule 14, Section 5(a) of the EPIRA IRR wherein the DU transfers the responsibility to service the area described therein to the QTP. For avoidance of doubt, the contract shall be with a period and during its existence, the DU’s franchise shall not be deemed as transferred, abandoned and/or modified with respect to the area included therein, as only the right to service such area shall be deemed assumed by the QTP.

**Section 3. Scope.** – These Rules shall apply to Entities which seek to provide Electricity Service as QTPs in Declared Unviable Areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR.

## ARTICLE II

Qualification and Authorization of Entities to Provide Electricity Service in Declared Unviable Areas

**Section 1. Who may become QTPs.** – The following may be considered as QTPs:

- (a) An Entity, except a DU whose franchise includes the Declared Unviable Area being applied for service by QTP, who was determined as a prospective QTP, in accordance with the Selection Process conducted by the DOE for Declared Unviable Areas; or
- (b) An Entity, other than the concerned DU, its affiliate or subsidiary, who, prior to the issuance of these Rules, without undergoing the DOE’s Selection Process, is already engaged in providing electricity service in an Unviable Area; provided that, the same or a portion thereof becomes a Declared Unviable Area.

An affiliate or subsidy of a DU may participate in the Selection Process of the DOE with respect to a Declared Unviable Area within such DU’s franchise area and become a prospective QTP therein under Section 1 (a), provided that there is complete business, operational, and functional separation between such affiliate or subsidiary and the concerned DU.

**Section 2. Qualification and Authorization of Entities under Section 1 (a) to Operate as QTPs.** – An Entity who is pre-qualified by the DOE under DOE Department Circular No. 2004-06-006 and selected as a prospective QTP through the DOE’s Selection Process for a specific Declared Unviable Area, shall file an application with the ERC for authorization to provide Electricity Service in an specific Declared Unviable Area as a QTP and for issuance of its corresponding ATO and for approval of its QSC with NPC. Together with its application, it shall submit the following:

- (a) QSC between the QTP and NPC;
- (b) Waiver Contract signed by the concerned DU and the QTP;

- (c) SDA signed between the QTP and the NPC, if any;
- (d) DOE Certification that the QTP was pre-qualified in accordance with DOE Circular No. 2004-06-006 and DOE Circular No. 2005-12-011;
- (e) DOE Certification that the QTP was determined based on the DOE’s Selection Process;
- (f) Relevant technical details of engineering design of the proposed system, including the generation facilities and associated delivery systems, if necessary;
- (g) Relevant financial details of the project, if necessary;
- (h) Other necessary permits to implement the project, including environmental certificate from appropriate government agencies; and
- (i) Other documents and information that the ERC may require.

**Section 3. Qualification and Authorization of Entities under Section 1 (b) to Operate as QTPs.** – An Entity falling under Section 1 (b) who intends to continue operating as a QTP shall file an application with the ERC, within One (1) Year from effectivity of these Rules, for authorization to provide, as a QTP, Electricity Service in a specific Declared Unviable Area where it is already operating as an electricity service provider. Together with its application, it shall submit the following:

- (a) QSC between the QTP and the NPC;
- (b) Waiver Contract signed by the concerned DU and the QTP;
- (c) SDA signed between the QTP and NPC, if any;

- (d) Data regarding the continuation of operations of the applicant in the Declared Unviable Area;
- (e) DOE Certification that the area already being served by applicant is a Declared Unviable Area;
- (f) Relevant technical details of engineering design of the system used by applicant, including the generation facilities and associated delivery systems, if necessary;
- (g) Relevant financial details of applicant's operations, if necessary;
- (h) Other necessary permits, including environmental certificate from appropriate government agencies, if applicable, secured by applicant; and
- (i) Other documents and information that the ERC may require.

**Section 4. ERC Action on the Application.** – Upon the filing of the application, the ERC may, on its own or upon motion, grant a Provisional Authority (PA) based on the allegations of the application and on such other documents attached thereto or submitted by the parties. The ERC, if necessary, may schedule a hearing for the issuance of a PA not later than thirty (30) days from the filing of the application. Thereafter, the Commission shall issue a ruling either granting or denying the PA stating clearly the reasons therefor, within seventy five (75) days from the filing of the application.

The ERC shall decide the application within sixty (60) days from the time the applicant formally offers its evidence; otherwise, the application shall be deemed approved upon the lapse of said period. Its decision approving the application shall constitute as the applicant's license or ATO within the Declared Unviable Area applied for as a QTP.

**Section 5. NPC Performing the Functions of the QTP.** – In the event that no QTP qualifies to provide Electricity Service to a Declared Unviable Area, NPC-SPUG shall act as the provider of last resort and perform the functions of the QTP. NPC shall include its ME Subsidy requirements in its application to the ERC as provided in Section 3(a) of Article IV.

**Section 6. Special Rules for Small QTPs not Requiring Subsidies.** – An Entity providing Electricity Service in a Declared Unviable Area which:

- (a) has a generating capacity below 200 kW; or
- (b) has fewer than 100 connections; and
- (c) does not seek to avail of a Missionary Electrification Subsidy because its retail rate is equal to or lower than the ERC-approved SARR in the Declared Unviable Area where it operates,

shall be deemed qualified and authorized to act as QTP upon issuance of a COC in its favor, provided that such authorization shall be valid only during the effectivity of the COC, while the above conditions are satisfied, or upon revocation by the ERC, whichever comes earlier.

If the above conditions are no longer prevailing, said Entity shall comply with Article II, Section 2 or 3, as applicable, if it intends to continue operating as a QTP.

**Section 7. QTP Service Contracts (QSCs).** – the QSC between a QTP and NPC shall include the following:

- (a) A clear description of the scope of services to be offered by the QTP, including schedule for the target connections, and modalities of payment collection, among others;

- (b) The Full Cost Recovery Rate (FCRR) and an adjustment mechanism provision, if any, that promotes fair and reasonable consumer tariffs in accordance with the level of service provided by the QTP;
- (c) Efficient allocation of risk;
- (d) The term of the QSC, which shall be commensurate to recover the necessary investment of the QTP, but in no case to exceed twenty (20) years;

In the event that the QSC’s term exceeds the remaining franchise term of the concerned DU, the QSC’s term shall be shortened and the FCRR adjusted accordingly, unless Congress grants such DU an extension or renewal of its franchise;

- (e) The responsibility of the QTP to ensure, at all terms, consumer safety and protection; and
- (f) The applicable service and safety standards as provided in Article III.

**Section 8. Other Required Permits.** – A QTP whose Electricity Service includes the generation of electricity shall likewise be required to secure a COC from the ERC in accordance with the ERC’s *Guidelines for the Issuance of Certificate of Compliance for Generation Companies/Facilities, as Amended*.

### ARTICLE III

#### Service Standards and Compliance with the Distribution Code

**Section 1. Service Standards and Compliance with the Distribution Code.** – Service and safety standards that the ERC shall require QTPs to meet, which may include applicable provisions of the Distribution Code, shall be included as specific terms and conditions of the QSC.

**Section 2. Rules for the Setting of Service and other Standards.** – Given the different technical configurations of the facilities that the QTP may propose to conduct, the ERC hereby adopts the following rules for setting the service and other operating standards for QTP operation, on a case-to-case basis:

- (a) The ERC shall have the full authority to set the actual parameters to be followed by any QTP during its review of the technical design for applicable generating facilities and associated delivery systems and inspection of the actual construction of entire system. The service and other operating standards specified in the approved QSC shall be used as the basis of ERC’s evaluation of the technical and operating performance of the QTP.
- (b) ERC shall allow special operating standards for low-cost electrification solutions to cater to the socio-economic conditions of the target customers in the Declared Unviable Areas.
- (c) As a general rule, the QSC must conform to the following requirements of the Philippine Distribution Code for safety and acceptable service standards for the consumers, subject to the size of QTP and the ability to pay of the target customers:

- (i) Below One (1) MW: those provisions of the Philippine Distribution Code that represent the minimum for safety standards; and
- (ii) One (1) MW and above provisions of the Philippine Distribution Code that represent the minimum for safety and service standards.

### ARTICLE IV

#### Process for Setting and Adjusting Full Cost Recovery Rate (FCRR), the Subsidized Approved Retail Rate (SARR) and Missionary Electrification Subsidy (ME Subsidy)

**Section 1. Determination of the FCRR.** –

In the QTP’s application with the ERC for authorization to provide Electricity Service in a specific Declared Unviable Area as a QTP and issuance of its corresponding ATO and for approval of its QSC with NPC, it shall indicate its proposed FCRR. The ERC shall evaluate and set the appropriate FCRR, as follows:

- (a) For areas where two or more qualified Entities participated in the DOE’s Selection Process, the FCRR shall be that FCRR proposed by the selected Entity.
- (b) For areas where there is only one Entity who participated or qualified in the Selection Process, the FCRR shall be determined using the twelve percent (12%) Return on Rate Base (RORB) methodology or some other appropriate methodology as benchmark for determining if the proposed FCRR of such Entity is reasonable.
- (c) For applications filed pursuant to Section 3 of Article II, the ERC shall also use the twelve percent (12%) Return on Rate Base (RORB) methodology or some other appropriate methodology as benchmark for determining if the proposed FCRR is reasonable.

**Section 2. Rules for Setting the Subsidized Approved Retail Rate (SARR).**

NPC-SPUG shall file an application with ERC for the setting of the maximum retail rate which customers should pay for electricity in QTP Service Areas. Based on this application, the ERC will establish the maximum Subsidized Approved Retail Rate (SARR). This rate may be uniform throughout the Philippines, or may be established at different levels for different areas, according to the state of development of the areas.

Pending ERC approval of the NPC-SPUG Application, the SARR for a particular QTP Service Area shall be the ERC-approved and existing retail rate of the waiving DU.

Where the full cost of serving an area is higher than the SARR, an ME Subsidy may be offered to the QTP operating in the area to allow it to viably serve the same while charging no more than the SARR. In such cases, revenues from the SARR combined with the ME Subsidy should put the QTP in the same financial position as if it was able to charge the FCRR.

**Section 3. Rules for Setting the ME Subsidy.**

– Consistent with the NPC-SPUG filing for UC-ME for Delegated NPC-SPUG Areas as provided for in ERC Resolution No. 11, Series of 2005 entitled “*Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas,*” the following requirements and procedures shall be followed in the submission, evaluation and approval of the UC-ME for QTP areas.

- (a) **Periodic Filing.** On or before September 30 of every calendar year, NPC-SPUG shall file its application with the ERC to set the UC-ME sufficient to cover the ME Subsidy estimated requirements for NPC-SPUG, including the amount needed to sufficiently cover the ME Subsidy requirements of QTPs.

In its decision, the ERC shall specifically indicate the amount, expressed in Peso per Kilowatt-hour, allocated for QTPs.

- (b) **Quarterly True-Up Adjustments.** NPC-SPUG shall file a quarterly application, if necessary with the ERC to recover any shortfall in the ME Subsidy caused by factors such as:

- (i) Collection shortfall;
- (ii) Adjustments in the FCRR; and
- (iii) Other analogous cases.

- (c) **Administration of ME Subsidy.** NPC-SPUG shall establish a separate trust account wherein all UC-ME transfers allocated to QTPs from the PSALM administered Special Trust Fund will be deposited. This



bank account will be governed by a set of predefined rules. The administrator of the account will make disbursements to the QTPs according to such rules. The transfer rules from the Account Administrator to the QTPs will also be defined in the SDA signed by the QTP and NPC-SPUG.

**(d) Reconciliation of Actual UC-ME.** On or before the first quarter of the calendar year, NPC-SPUG shall reconcile all amounts received against all disbursements made for the previous year. If the reconciliation results in NPC having surplus funds, the amount of the ME Subsidy for the year shall be adjusted accordingly. Conversely, if the reconciliation results in the NPC-SPUG experiencing a deficiency, NPC-SPUG shall be entitled to file an application for an increase in the ME Subsidy to cover the shortfall.

**(e) Priority in the UC-ME.** The Missionary Electrification Development Plan (MEDP) shall indicate the priority or allocation among the UC-ME supported activities. In any event, QTPs shall be *pari passu* or equal in priority with all NPPs in Delegated NPC-SPUG areas which require ME Subsidies. However, small QTPs which are identified in the MEDP shall enjoy higher priority on the provision of subsidy over larger QTPs and NPPs.

**(f) Automatic Adjustment to UC-ME.** If as a result of factors outside its control, NPC-SPUG is unable to file an acceptable UC-ME application for Delegated NPC-SPUG Areas and/or QTPs before September 30, or the ERC is unable to issue a UC-ME Decision before the end of the Calendar Year, the UC-ME approved by the ERC for the previous calendar year will be automatically adjusted based on the following formula and events:

$$UCME_t = UCME_{t-1} \times AF_1$$

Where:

T = Forthcoming year

t-1 = Current year

$UCME_{t-1}$  = UC-ME (PhP/kWh) approved for the current year  $AF_t$

If NPC-SPUG fails to file an acceptable UC-ME application with the ERC before September 30 of the current year:

= 0.5 when t = 2006

= 0.6 when t = 2007

= 0.7 in all other subsequent years

If ERC is unable to issue a UC-ME Decision before December 31 of the Current Year:

= 1.00

Nothing in this provision shall be construed as allowing the reduction in the subsidy allocation of small QTPs as identified in the MEDP.

**Section 4. Rules for Adjusting the FCRR and the SARR.** – The FCRR and the SARR for a QTP Area may be adjusted as follows:

(a) The FCRR may be adjusted automatically on a monthly basis by the QTP to reflect changes in the price of fuel, foreign exchange rates or other input costs, in accordance with the Retail Rate adjustment rules set out in the QSC for that Area.

(b) After a period of time, the ERC may undertake a review of the SARR, to reset the rate at a new level. Increases in the SARR may be made to:

(i) Directly reflect increases in the FCRR; and

(ii) Reduce the amount of the subsidy required.

## ARTICLE V

### Miscellaneous Provisions

**Section 1.** Nothing in these Rules shall be construed as to limit the authority of the DOE to declare what Unviable Areas, regardless of whether or not the concerned DUs waive such areas, shall be open for participation by QTPs under Section 3, Rule 14 of the EPIRA-IRR.

**Section 2.** Consistent with Section 5 (a), Rule 14 of the EPIRA-IRR, in case the DU fails to provide electricity to an Unviable Area, or if such service made available to the area is not comparable to the service provided to the rest of the DU's franchise area, and such DU refuses to waive said Unviable Area for inclusion in DOE's QTP Program, the ERC shall, upon petition by any affected party or on its own initiative, after due notice and hearing, endorse the Unviable Area to the DOE for inclusion in its QTP Program and require the DU to execute a Waiver Contract with the QTP chosen in accordance with the DOE's CSP to provide Electricity Service in such Unviable Area.

**Section 3.** The ERC may exempt the QTPs from its requirements imposed on generation companies and distribution utilities on the grid as it deems appropriate.

## ARTICLE VI

### Separability

If for any reason, any section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

## ARTICLE VII

### Effectivity

These Rules shall become effective fifteen (15) days after its publication in a newspaper of general circulation or filing thereof with the Office of the National Administrative Registrar at the University of the Philippines Law Center, whichever comes earlier.

Pasig City, 3 May 2006

**RODOLFO B. ALBANO, JR.**

Chairman

**OLIVER B. BUTALID**

Commissioner

**ALEJANDRO Z. BARIN**

Commissioner

**JESUS N. ALCORDO**

Commissioner

**RAUF A. TAN**

Commissioner



# Chapter III

## Energy Efficiency and Conservation

### REPUBLIC ACT NO. 7648

AN ACT PRESCRIBING URGENT RELATED MEASURES NECESSARY AND PROPER TO EFFECTIVELY ADDRESS THE ELECTRIC POWER CRISIS AND FOR OTHER PURPOSES

---

**SECTION 1. *Short Title.*** – This Act shall be known as the “Electric Power Crisis Act of 1993.”

**SECTION 2. *Declaration of Policy.*** – It is hereby declared the policy of the State to adopt adequate and effective measures to address the electric power crisis that has disrupted the country’s economic and social life and assumed the nature and magnitude of a public calamity.

**SECTION 3. *Negotiated Contracts.*** – Pursuant to the above declared policy and in the public interest and whenever it is advantageous to the Government, the President may enter into negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities, subject to the following requirements:

- (a) In order to inform competitive contractors, the list of projects to be undertaken under this Act, together with their description, the budgetary estimates involved and other salient features, shall be published in a newspaper of general circulation thirty (30) days after the effectivity of this Act;
- (b) Upon perfection of the contract, the terms and conditions of the same, with

the name and qualifications of the contractor, shall likewise be published in a newspaper of general circulation two (2) weeks before the signing of the contract;

- (c) The contracts shall be awarded only to contractors with:
  - (i) proven competence and experience in similar projects;
  - (ii) competent key personnel and sufficient and reliable equipment; and
  - (iii) sound financial capacity; and
- (d) All the awarded projects shall be subject to existing government auditing rules and regulations governing negotiated contracts.

**SECTION 4. *Return on Rate Base.*** – Further pursuant to the above- declared policy, the President is hereby authorized, whenever it is necessary for the national welfare and in the public interest, to fix the rate of return on rate base of the National Power Corporation (NAPOCOR) to not more than twelve per centum (12%) of the rate base as defined in Section 4 of Republic Act No. 6395, as amended. Any increase in power rates shall

take effect only upon approval of the Energy Regulatory Board (ERB), after due notice and hearing: *Provided*, That any increase in power rates by the NAPOCOR to its customers within the year 1993 shall not exceed an average of eighteen centavos (P 0.18) per kilowatt hour: *Provided, further*, That any increase in power rates shall not be passed on to households consuming not more than one hundred (100) kilowatt-hours per month for five (5) years following the effectivity of this Act: *Provided, furthermore*, That the existing subsidy enjoyed by households consuming less than three hundred (300) kilowatt-hours per month shall continue in effect; *Provided, finally*, That no power rate increase whatsoever shall be imposed by the NAPOCOR in provinces producing geothermal power of not less than one hundred megawatts (100 MW) of actual capacity for one (1) year following the effectivity of this Act.

When the petition appears to be sufficient in form and in substance, the ERB, during the pendency of the case, may issue a provisional authority to increase the power rates, in whole or in part, which increase shall last for a period of sixty (60) days, and may be extended for another sixty (60) days: *Provided*, That the ERB can issue such provisional authority only during the effectivity of this Act.

**SECTION 5. *Reorganization of the National Power Corporation.*** – The President is hereby empowered to reorganize the NAPOCOR, to make it more effective, innovative, and responsive to the power crisis. For this purpose, the President may abolish or create offices; split, group, or merge positions; transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting measures and take such other related actions necessary to carry out the purpose herein declared. Nothing in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR: *Provided*, That any official or employee of the NAPOCOR who may be phased out by reason of the reorganization

authorized herein shall be entitled to such benefits as may be determined by the Board of Directors of the NAPOCOR, with the approval of the President.

The President may upgrade the compensation of the personnel of the NAPOCOR at rates comparable to those prevailing in privately-owned power utilities to take effect upon approval by Congress of the NAPOCOR's budget for 1994.

**SECTION 6. *Subsidy.*** – The Philippine Amusement and Gaming Corporation (PAGCOR) shall set aside ten per centum (10%) of its annual aggregate gross earnings for the next five (5) years as subsidy to the NAPOCOR: *Provided*, That such percentage allocation shall be based on gross revenue after deducting the five per centum (5%) franchise tax and the fifty per centum (50%) income share of the National Government.

**SECTION 7. *Duration of Grant of Powers.*** – The authority granted to the President under this Act shall subsist, be valid and effective for a period of one (1) year from the effectivity of this Act, unless sooner withdrawn by a resolution of Congress, without prejudice to rights and benefits that may have been vested, and culpabilities and liabilities that may have been incurred.

**SECTION 8. *Oversight Committees.*** – There is hereby created an Oversight Committee in each House of Congress to be composed of five (5) members of each, as may be designated by the Senate President and the Speaker of the House of Representatives, to monitor the implementation of this Act and the exercise of the authority granted thereunder.

The Oversight Committees shall submit periodic reports, evaluations and recommendations to the Senate and the House of Representatives.

**SECTION 9. *Report to Congress.*** – The President shall submit a quarterly report to Congress on the implementation of this Act.

**SECTION 10. *Separability Clause.*** – If for any reason any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**SECTION 11. *Repealing Clause.*** – All laws, decrees, orders, rules and regulations, or

portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

**SECTION 12. *Effectivity Clause.*** – This Act shall take effect on the day following its publications in at least two (2) national newspapers of general circulation.

Approved, April 5, 1993

## ADMINISTRATIVE ORDER NO. 103

### DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT

---

**WHEREAS,** the continued adoption and implementation of austerity measures are necessary in order to meet the country’s fiscal targets, maintain its macroeconomic stability and improve investor confidence;

**WHEREAS,** the national government, its agencies and instrumentalities must undertake cost-cutting measures to reduce expenses and channel its scarce resources towards the implementation of the 10-Point Legacy Agenda;

**WHEREAS,** government-owned and controlled corporations, government financial institutions, and other government instrumentalities should likewise contribute to reducing the consolidated public sector deficit, and to decreasing the public sector debt;

**WHEREAS,** prudent fiscal management remains critical in the execution of a sound budget policy to ensure a balanced budget by 2009;

**NOW, THEREFORE,** I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct:

SECTION 1. All national government agencies (NGAs), including state universities and colleges (SUCs), government-owned and controlled corporations (GOCCs), government financial institutions (GFIs), and other government corporate entities (OGCEs), and their subsidiaries, and other instrumentalities under the Executive Department, whether or not they receive funding support through the *General Appropriations Act*, are hereby ordered to adopt the following austerity measures:

(a) Suspension of the following:

- (1) All foreign travels, except for (i) ministerial meetings, and (ii) scholarship/trainings that are grant-funded or undertaken at no cost to the government.

Henceforth, all foreign travels of Presidential appointees, even if allowed under this provision, must first be cleared by the Office of the President. Further, all agencies shall submit a monthly report to the Office of the President, stating the names of officials or employees who traveled abroad, the reasons for such travel, and the cost incurred by the

government.

- (2) All local travels, unless urgency necessary and allowed by Secretary of the Head of the SUC, GOCC, GFI, or OGCE;
  - (3) Purchase of any type of motor vehicles, except ambulances and those required by the military and police;
  - (4) Paid media advertisements, except those required in the issuance of agency guidelines, rules and regulations, the conduct of public bidding, and the dissemination of important public announcements;
  - (5) Conduct of training, seminars, and workshops, except if funded by grants, or if the cost may be recovered through exaction of fees;
  - (6) Expansion of organizational units and/or creation of positions, except those following “scrap and build” policy or matched by the deactivation of existing units/positions of the same cost;
  - (7) Conduct of celebrations and cultural or sports activities not related to the core function of the agency, except athletic competitions conducted by public schools or SUC’s; and
  - (8) Donations, contributions, grants and gifts, except if said activities are undertaken pursuant to the mandate of the donor-agency;
- (b) Reduction of at least ten percent (10%) in the cost of the following:
- (1) Services of consultants, technical assistants, contractual, and casual employees; and
  - (2) Consumption of fuel, water, office supplies, electricity and other utilities. For this purpose, agencies are hereby authorized to install and use energy-efficient lights and fixtures, and optimize the utilization of internet facilities especially for long-distance communications;
- (c) Suspension of all tax expenditure subsidies to GOCC’s, OGCE’s and local government units, except those approved by the Fiscal Incentives Review Board;
- (d) Adoption of a scheme that will allow employees rendering overtime to be compensated through time/days off work in lieu of overtime pay, in accordance with guidelines jointly issued by the Department of Budget and Management (DBM) and the Civil Service Commission (CSC).
- (e) In the procurement of goods and services, strictly comply with the *Government Procurement Reform Act* (RA 9184) and its Implementing Rules and Regulations, particularly in the use of the Government Electronic Procurement System for public bidding, advertisement of opportunities and reporting of bid awards results; and
- (f) Strict prioritization of capital expenditures, and realignment or use of savings to fund capital programs of the agencies, especially this in pursuit of the 10-Point Legacy Agenda.

SECTION 2. Consistent with the government’s rationalization policy, the provisions of Republic Act No. 7430, or the *Attrition Law*, specifically Section 3 thereof which prohibits the filling-up of positions that have been vacated by reason of resignation, retirement, dismissal, death or transfer to another office, with certain exceptions, are hereby adopted until lifted by the President.

SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from *Salary*

*Standardization Law* or not, are hereby directed to:

(a) Limit grant of honoraria and other forms of allowance to the following:

(1) Teaching personnel of the Department of Education, Commission on Higher Education, Technical and Education and Skills Development Authority, SUCs and other education institutions engaged in actual classroom teaching whose teaching load is outside the regular office hours or in excess of the regular load;

(2) Lecturers, resources persons, coordinators and facilitators in seminars, training programs, and other similar activities in training institutions, including those conducted by entities for their officials and employees;

(3) Chairs and members of commissions, boards, councils, or other similar entities who are not paid salaries but compensated in the form of honoraria as provided by law, rules and regulations; and

(4) Those who are involved in government procurement in accordance with Republic Act No. 9184 and DBM Budget Circular 2004-5;

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to *per diems*, honoraria, housing and miscellaneous allowances, or car plans; and (ii) in the case of those receiving *per diems*, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (P 20,000.00) per month, reduce the combined total of said *per diems*, honoraria and benefits to a maximum of Twenty Thousand Pesos (P 20,000.00) per month.

SECTION 4. Each NGA, SUC, GOCC, GFI, OR OGCE shall immediately prepare an austerity plan to implement the provisions of this Order.

SECTION 5. Heads of NGAs and SUCs, as well as the governing boards of GOCCs GFIs, and OGCEs shall responsible for the strict implementation of Memorandum Order No. 20 dated June 25, 2001 and this Order. Any violation thereof shall be dealt with accordingly.

SECTION 6. The Legislative and Judicial Branches of Government, as well as agencies vested with fiscal autonomy, such as constitutional commissions and local governments, are strongly urged to adopt the provisions of this Order.

Local government units are reminded to adhere to prescribed limits on personal services expenditures under the *Local Government Code*, and to maximize the utilization of twenty percent (20%) of their Internal Revenue Allotments for development projects.

The Commission on Audit is likewise urged to assist in monitoring and ensuring strict compliance of this Order.



SECTION 7. This Administrative Order shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Done in the City of Manila this 31st day of August, in the year of Our Lord, Two Thousand and Four.

## ADMINISTRATIVE ORDER NO. 110

### DIRECTING THE INSTITUTIONALIZATION OF A GOVERNMENT ENERGY MANAGEMENT PROGRAM (GEMP)

---

**WHEREAS**, under Section 2 of R.A. No 7638, otherwise known as the “Department of Energy Act of 1992”, it is declared the policy of the State to ensure a continuous, adequate, reliable, and economic supply of energy through, among others, the judicious conservation, renewal and efficient utilization of energy, to keep pace with the country’s growth and economic development;

**WHEREAS**, it is imperative that long-term measures be adopted to minimize if not forestall any adverse effect of the crude price increases on the country’s essential economic activities;

**WHEREAS**, to mitigate the ill effects of energy use on the environment, there is a compelling need for the Government to undertake a program promoting the judicious use of energy resources through intensified conservation efforts and efficient utilization thereof;

**WHEREAS**, the Government’s five- (5) point energy reform agenda on energy independence aims to achieve sixty (60) percent self-sufficiency level by 2010 and thus shield the country from the price volatility of imported energy through the enhanced development and use of indigenous oil and gas reserves, renewable energy, alternative fuels, strategic alliances with other countries, and effective implementation of a National Energy Efficiency and Conservation Program (NEECP);

**WHEREAS**, to maintain the Government’s credibility in encouraging the adoption of energy efficiency and conservation measures by the private sector, the Government shall lead by example implementing its own energy management program;

**WHEREAS**, Section 1 (b) (2) of the Administrative Order No. 103 requires the reduction of at least ten percent (10%) in the cost of the consumption of fuel, water, office supplies, electricity and other utilities. For this purpose, agencies are hereby authorized to install and use energy-efficient lights and fixtures, and optimize the utilization facilities especially for long-distance communication.

**NOW, THEREFORE** I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

#### SECTION 1. *The Government Energy Management Program (GEMP).* –

##### 1.1 GEMP Goal

The Government shall aim to reduce its monthly consumption of electricity (in kilowatt-hours) and petroleum products (in liters) by at least ten percent (10%) through the implementation of the GEMP for a minimum period of three (3) years starting January 2005.

##### 1.2 Methodology

(a) Electricity Efficiency and Conservation

(1) Each government entity is mandated to adopt and implement an electricity efficiency program to reduce electricity consumption by ten (10) percent of its average monthly consumption for the 1st semester of 2004.

(2) Each Government, thru the Department of Budget and Management (DBM) in coordination with DOE, shall institute the government procurement guidelines on energy efficient lighting and appliances based on DOE-certified energy efficiency rating (Attachment A).

(3) Each government entity may utilize or avail itself of the Department of Energy (DOE) approved and other acceptable energy efficiency measures in order to effectively comply with this Administrative Order.

(b) Efficiency and Conservation in Fuel Use of Government Vehicles

(1) Each government entity is mandated to adopt and implement a program that will reduce its fuel consumption for transport by ten (10) percent of its average monthly consumption for the 1st semester of 2004.

(2) The ten percent (10%) fuel reduction may be achieved thru substitution or blending of petroleum products with alternative fuels, such as Coco-Methyl Ester (CME) in accordance with the provisions of MC No. 55, Compressed

Natural Gas (CNG), Ethanol, and other biofuels, among others as certified by the DOE.

(3) There shall be a moratorium on the purchase of new government vehicles for six (6) months after the effectivity of this Administrative Order, provided that once the moratorium has been lifted, purchase of new government vehicles shall be limited to engine displacements of no more than 1600 cc and 2500 cc for gasoline and diesel engines, respectively.

(4) Government vehicles shall be used for official business purposes only.

### 1.3 Compliance

(a) Energy Surveys and Audits

(1) Each government entity shall conduct a prioritized survey by requiring walk-through audits in all its facilities. The DOE shall provide technical assistance to all government entities for this purpose.

(2) Each government entity, upon establishing its priorities, shall conduct detailed energy audits either through the services of the DOE or an Energy Service Provider (ESP).

(b) Energy Conservation Officer

(1) Each government entity shall designate a senior official as its Energy Conservation Officer (ECO).

(2) The ECO shall be responsible for his/her government entity's compliance with the provisions

of this Administrative Order, as well as the development and implementation of energy efficiency and conservation measures.

(c) Implementing Guidelines, Rules and Regulations

The DOE, with the concurrence of DBM, shall promulgate the necessary implementing guidelines, rules and regulations to ensure compliance with the provisions of this Administrative Order.

SECTION 2. *Inter-Agency Coordination.* –

The DOE shall establish an inter-agency coordination among all government entities to ensure compliance with this Administrative Order, including the conduct of appropriate information, education and communication campaign.

SECTION 3. *Funding.* –

3.1 Source of Funds

(a) Each government entity shall allocate appropriate amount from its approved-budget for the years 2004 and 2005 for the implementation of its prioritized and planned energy management program.

(b) Each government entity shall include in its budget preparation the necessary funds for its energy management program from 2006 onward.

3.2 Use of Energy Savings

At least 50% of the savings to be realized through the GEMP may be used by the government entity for the improvement of energy efficiency in its facilities, subject to the guidelines to be promulgated by the DOE and DBM.

SECTION 4. *Effectivity.* –

This Administrative Order shall take effect immediately.

Done in the City of Manila, this 25th day of October, in the year of Our Lord, Two Thousand and Four.

**ADMINISTRATIVE ORDER NO. 110-A**

AMENDING ADMINISTRATIVE ORDER NO. 110 S. 2004 DIRECTING THE INSTITUTIONALIZATION OF A GOVERNMENT ENERGY MANAGEMENT PROGRAM (GEMP)

**WHEREAS**, Administrative Order No. 110 dated October 25, 2004 directed the institutionalization of a Government Energy Management Program (GEMP);

**WHEREAS**, Section 3, Item 3.2 of Administrative Order 110 provides that at least 50% of the savings to be realized through the GEMP may be used by the government entity for the improvement of

energy efficiency in its facilities subject to the guidelines to be promulgated by the DOE and DBM;

**WHEREAS**, Section 3, Item 3.2 of Administrative Order No. 110 only appropriates 50% GEMP savings for the improvement of government's energy efficiency, thereby limiting the use of the said savings for said specific purpose.

**WHEREAS**, Administrative Order No. 135 dated December 27, 2005 authorized the grant of Collective Negotiation Agreement (CNA) incentive to employees in government agencies;

**WHEREAS**, the grant of the CNA is in recognition of the efforts of labor and management to achieve all planned targets, programs and services approved in the agency's budget at lesser costs;

**WHEREAS**, it has become necessary to amend the above specific provision of Administrative Order No. 110 to provide for the needs of the government employees, giving them non-economic benefits in the form of transportation (shuttle bus and service vehicles to and from the office) for their active participation and in appreciation in their role in the realization of the GEMP; and

**WHEREAS**, the shuttle buses and service vehicles made available to government employees and officials will not only provide them safety and comfort, but will lessen their travel time and expenses, thereby giving them more quality time to spend with their families.

**NOW, THEREFORE**, I, GLORIA MACAPAGAL-ARROYO, President of the Republic Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Section 3, Item 3.2 of Administrative Order No. 110 is hereby amended to read as follows:

“SECTION 3. FUNDING

xxx

“3.2. Use of Energy Savings

“The savings to be realized through the GEMP may be used by the government entity for the improvement of energy efficiency, subject to the guidelines to be promulgated by the DOE and DBM, and also for the purchase of shuttle buses and service vehicles for their employees and officials subject to the usual government auditing and accounting rules and regulations.”

SECTION 2. This Order shall take effect immediately.

Done in the City of Manila, this 27th day of March, in the year of Our Lord, Two Thousand and Six.

## **IMPLEMENTING RULES AND REGULATIONS DIRECTING THE INSTITUTIONALIZATION OF A GOVERNMENT ENERGY MANAGEMENT PROGRAM (GEMP)**

---

*Pursuant to Section 1.3 (c) of Administrative Order (AO) No. 110 as amended and pursuant to the policy objectives behind Administrative Order Nos. 103 (s. 2004) and 126 (s. 2005) aimed to address the increasing world oil prices through the adherence to the government's energy conservation program, the following rules and regulations are hereby adopted and promulgated:*

### **RULE I GENERAL PROVISION**

SECTION 1. *Title* – These Rules shall be known as the *Implementing Rules and Regulations (IRR) for Directing the Institutionalization of a Government Energy Management Program (GEMP)*.

SECTION 2. *Purpose.* – These Rules shall provide guidelines on the operationalization and the institutionalization of the GEMP in the Philippines in accordance with AO Nos. 103, 110, 110-A and 126.

SECTION 3. *Scope.* – This IRR shall cover the roles and responsibilities of the Department of Energy (DOE), the Department of Budget and Management (DBM), the Department of Public Works and Highways (DPWH), the National Housing Authority (NHA), the Department of the Interior and Local Government (DILG), the Department of Trade and Industry (DTI), the Department of Education (DepEd), the Philippine Information Agency-Office of the Press Secretary (PIA-OPS), the Department of Environment and Natural Resources (DENR) and all government entities in implementing the GEMP.

## RULE II DEFINITION OF TERMS

SECTION 1. *Definitions* – The following terms as used in this IRR shall be defined as follows:

**“Agency Rating”** refers to the over-all rating posted in the government entity’s premises showing the result of the Spot Check conducted by the Energy Audit Team (EAT) following its established rating scheme.

**“Alternative Fuel”** refers to biodiesel, bioethanol, natural gas, battery/cell, hydrogen and automotive LPG, instead of pure gasoline, diesel and kerosene.

**“Energy Audit Team”** or **“EAT”** refers to the group tasked to implement Administrative Order No. 103 (s. 2004), Administrative Order No. 110 (s. 2004), Administrative Order No. 110-A (s. 2006), and Administrative Order No. 126 (s. 2005).

**“Energy Conservation Officer”** or **“ECO”** refers to a Senior Official who is officially designated by Head of Agency concerned to ensure the agency’s compliance with the

provisions of Administrative Order No. 103 (s. 2004), Administrative Order No. 110 (s. 2004), Administrative Order 126 (s. 2005) and this IRR, as well as the development and implementation of other energy conservation measures.

**“Energy Survey/Audit”** is defined as the verification, monitoring and analysis of the use of energy, including preparation of a technical report containing recommendations for improving energy efficiency with cost-benefit analysis and an action plan to reduce energy consumption to be provided to the agency requesting audit.

**“Government entity”** refers to all departments, bureaus, agencies and instrumentalities of the Philippine Government, including Government-Owned and/or Controlled Corporations (GOCCs) and other government corporate entities (OGCEs) and their subsidiaries, Government Financial Institutions (GFIs), as well as state universities and colleges (SUCs).

**“Government facility”** means any building or cluster of buildings, grounds, or structure, as well as any fixture or parts thereof, including the associated energy consuming support systems, which is constructed, renovated or purchased in whole or in part for use by the Philippine Government. It shall also include any building rented/leased in whole or in part for use by the Philippine Government.

**“Government vehicle”** refers to any motor vehicle owned or registered in the name of a government entity.

**“Minimum Energy Performance Specification (MEPS)”** refers to the minimum energy performance specification set by the Department of Trade and Industry-Bureau of Product Standards (DTI-BPS) for specific lighting products.

**“Spot Check”** is the conduct of an unannounced inspection of any government entity or facility for the purpose of, but

not limited to, checking, monitoring and evaluating the energy consumption to verify if the energy conservation and efficiency programs are being implemented.

### **RULE III ENERGY CONSERVATION PROGRAMS**

SECTION 1. *Formulation of Energy Conservation Programs.* – In accordance with the policy of the government to promote the judicious and efficient utilization of energy resources, an Energy Conservation Program (ECP) shall be formulated by each government entity to include energy conservation measures, target savings, motor vehicle inventory and other strategies. In the development of the ECP, the following strategies must be adopted:

- (1) Aggressive promotion of energy conservation and energy efficient technology through the conduct of appropriate information, education and communication campaign, energy audits/surveys, and spot checks without prejudice to the employees/officials' productivity and performance;
- (2) Purchase and use of appliances and equipment to be selected only from the list of DOE-certified efficient products as posted in the DOE website and as may be endorsed by DOE through other means, whenever applicable;
- (3) Adherence to the provisions of the *National Building Code* (PD 1096), particularly on the implementation of the "Guidelines for the Energy Conserving Design of Buildings and Utility Systems";
- (4) Adoption of energy efficiency concepts in the procurement practices of the government;
- (5) Formulation of plans and programs to achieve at least ten percent (10%) reduction in electricity consumption;

- (6) Use of alternative fuels in government vehicles, among others, to help achieve at least ten percent (10%) fuel reduction in transport fuel consumption; and
- (7) Periodic review of the effectiveness of the energy efficiency and conservation program to include, but not limited to, the phased-in replacement program for lighting in existing or renovated government facilities.

SECTION 2. *Energy Audit Team (EAT).* – For the proper and effective implementation of the government's ECP and austerity measures, an EAT is hereby constituted composed of an Undersecretary of the DOE and a representative from the Office of the President (OP).

- (1) The EAT shall be assisted by the following units of DOE:
  - (a) Energy Utilization Management Bureau;
  - (b) Energy Research and Testing Laboratory Services;
  - (c) Information Technology and Management Services; and
  - (d) Energy Policy and Planning Bureau.
- (2) The EAT shall have the following functions:
  - (a) Conduct energy efficiency seminars, energy surveys, audits and spot checks;
  - (b) Ensure that each government entity designates a senior official as its ECO who will be responsible for the development and implementation of energy efficiency and conservation measures;
  - (c) Liaise with local government units and encourage them to implement

energy efficiency and conservation measures consistent with AO Nos. 103, 110, 110-A and 126;

- (d) Coordinate with the ECOs for the proper and effective implementation of energy efficiency measures;
- (e) Require ECOs to submit monthly electricity and fuel consumption reports;
- (f) Post in a conspicuous place the Agency Rating as a result of the Spot Check it has conducted, following the rating scheme as shown in Annex "A";
- (g) Validate the monthly and annual savings reports submitted by government entities;
- (h) Follow-up on its findings of deficiency in each agency and ensure that these deficiencies are properly addressed; and,
- (i) Adopt other measures not contrary to existing laws, rules and regulations for the strict implementation of the ECP and other energy-related austerity measures.

The EAT shall prepare and submit a summary report to the President of the Philippines on or before the third (3rd) week following the month under review, together with the recommended sanctions, if any, for erring government entities.

### SECTION 3. *Efficiency and Conservation in Electricity Use.* –

- (1) Each government entity shall adopt and implement an electricity efficiency and conservation program to reduce monthly electricity consumption by at least ten (10%) percent benchmarked on the average monthly consumption during the 1st semester of 2004;

- (2) The following measures shall be implemented by all government entities for particular appliance, equipment and accessories:

- (a) Operate air-conditioning systems (unitary type or centralized) as follows:
  - (i) Limit their operation/use to six (6) hours, preferably from 9:00 am to 4:00 pm. The operation/use of air-conditioning systems may be extended to a maximum duration of eight (8) hours during summer months (March to May) upon the discretion of the Head of Agency. In sensitive and customer service areas, their operation/use beyond eight (8) hours may be allowed: *Provided* that the Head of the Agency supervising such areas shall secure a Memorandum of Exemption (MOE) from the EAT, thereafter, upon verification, the EAT shall issue MOE to the concerned Agency;

Sensitive areas refer to areas with certain temperature requirements such as classified military facilities, Banko Sentral ng Pilipinas printing and minting areas, medicine stock areas in government hospitals, computer server rooms and data bank centers, among others.

- (ii) Set thermostat control to achieve room temperature of 25°C;
- (iii) Set at fan mode from 12:00 noon to 1:00 pm; and
- (iv) Observe regular maintenance servicing and regular cleaning and replacement of filters as necessary.

- (b) Electric fans, blowers and other cooling devices may be used during the 12:00 noon to 1:00 pm break period in lieu of air-conditioning units;
  - (c) Mandatory replacement of:
    - (i) All 40 watt fluorescent lamp tubes with 36 watt or less slim type lamp tubes;
    - (ii) All 20 watt fluorescent lamp tubes with 18 watt or less slim type lamp tubes;
    - (iii) All rapid start electromagnetic ballasts with preheat type electromagnetic ballasts or electronic ballasts; and
    - (iv) All incandescent bulbs with compact fluorescent lamps (CFLs);
  - (d) Lights shall be turned off during lunch breaks and after office hours, except in offices where continuous work or service to the public is being conducted;
  - (e) Computers are strictly for official use only and shall be shut down when not in use; and
  - (f) Elevators shall be programmed to bypass the 2nd floor or, if possible, set to service alternate floors. A sign to this effect shall be placed conspicuously at the entrance of the elevator for the proper guidance of agency employees and visitors: *Provided*, that the physically-challenged and those with heavy loads shall not be prevented from using the elevator to reach each floor.
- (1) Each government entity shall adopt and implement a program that will reduce its fuel consumption by at least ten (10%) percent benchmarked on the average monthly consumption during the 1st semester of 2005.
  - (2) The following measures shall be immediately implemented by all government entities for its vehicles:
    - (a) Use/purchase or lease of vehicles capable of using Alternative Fuel;
    - (b) Use of biodiesel products that comply with the Philippine National Standard (PNS 2020:2003) by blending a DOE-accredited biodiesel product with the diesel to comply with one percent (1%) Coco-Methyl Ester (CME) for use in all diesel-fed vehicles, pursuant to Memorandum Circular (MC) No. 55, series of 2004; and
    - (c) Adoption of the maintenance and driving tips indicated hereunder;
      - (i) Proper inflation and alignment of tires and proper alignment and balancing of wheels;
      - (ii) Periodic/regular oil change and oil filter replacement;
      - (iii) Regular engine tune-up and replacement of air and fuel filters;
      - (iv) Proper scheduling of daily trips to avoid unnecessary short trips;
      - (v) Smooth/moderate acceleration of vehicles and driving at a steady pace to avoid unnecessary and repetitious speeding up and slowing down;
      - (vi) Strict prohibition on idling of engines when vehicle is parked;

SECTION 4. *Efficiency and Conservation in Fuel Use of Government Vehicles.* –



and

(vii) Prohibition on overloading of vehicle.

(3) To develop a more dynamic and effective program for the rational use of energy, the following acts are hereby prohibited:

(a) The use of government vehicles for purposes other than official business: *Provided*, that in every case, the trip ticket authorizing the use of the vehicle shall be displayed on the windshield or in a conspicuous place on the vehicle: *Provided, further*, that vehicles used by intelligence and investigative agencies of the government shall not be covered by this provision;

(b) The use of government vehicles on Saturdays, Sundays, legal holidays, or out of the regular office hours or outside the route of the officials or employees authorized to use them, or by any person other than such official or employee, shall, unless properly authorized, be *prima facie* evidence of the violation of this paragraph.

#### **RULE IV**

#### **DESIGNATION OF**

#### **ENERGY CONSERVATION OFFICER**

SECTION 1. *Designation of Energy Conservation Officer (ECO).* – To fully address the thrust of government’s program on energy conservation and efficiency, the Head of each government entity shall designate a senior official as its ECO.

The names of the designated ECOs must be submitted to the DOE through the EAT within one (1) month upon the effectivity of this IRR and updated in the event of any change in the ECO designate.

SECTION 2. *Functions of Energy Conservation Officer.* – The ECO, who is responsible for the effective implementation and administration of energy conservation and efficiency program of the government entity concerned, shall have the following duties and responsibilities:

(1) Prepare, formulate and submit for approval to the Head of the government entity the design, plan and implementation, monitoring and evaluation scheme for the ECP consistent with the provisions of AO Nos. 103, 110, 110-A and 126 and this IRR;

(2) Submit to the EAT not later than the 15th day of January of each year the approved annual ECP. The ECP shall include energy conservation measures, target savings, motor vehicle inventory, and other strategies as stated in Rule III, Section 1 of this IRR, the total annual electricity and fuel consumption and savings for the one (1) year period covering September 2005 – August 2006 and every year thereafter;

(3) In case of modification at any point / time of the year, the revised ECP must be resubmitted to EAT, which shall likewise include a list of energy efficient equipment/materials /devices, and/or service vehicles to be procured or already procured; and

(4) Provide regular update to contain monthly breakdown on the Energy Performance of the government entity, utilizing the Electricity Consumption Report Form attached as Annex “B1” and the Fuel Consumption Report Form attached as Annex “B2”, and to submit a report to the EAT not later than the 15th day of the month following the period to be reported.

#### **RULE V**

#### **SAVINGS**

SECTION 1. *Source of Savings.* – Pursuant to AO Nos. 103, 110, 110-A, and 126,

all government entities are required to reduce their monthly consumption for electricity (in kilowatt-hours) and petroleum products (in liters) by at least ten percent (10%) through the implementation of the GEMP. The result of the reduction shall be the government entity's/government facility's corresponding savings.

SECTION 2. *Computation of Savings in Energy Efficiency and Conservation.* –

(1) *Savings from Electricity Use.* – The amount of savings in kilowatt-hour (kWh) during the reporting month shall be equivalent to the reduction in the monthly electricity consumption as benchmarked on the average monthly electricity consumption for the 1st semester of 2004.

Monthly Savings in Electricity, kWh  
= Jan. to June 2004 Ave. Monthly Electricity Consumption less Monthly Electricity Consumption.

*To compute for the equivalent Peso Savings, multiply the monthly kWh savings in electricity by the current average electricity rates per kWh (P/kWh).*

Monthly Savings in Electricity (kWh)  
x Peso/kWh average rate for that period = equivalent Peso Savings

The Annual Saving shall be the cumulative saving for the twelve-month period

$\Sigma$  Monthly savings for 12 months = Annual Savings (Pesos)

(2) *Savings from Fuel Use.* – The amount of savings in liters during the reporting month shall be equivalent to the reduction in the monthly fuel consumption as benchmarked on the average monthly fuel consumption for the 1st semester of 2005.

(a) Gasoline

Monthly Savings in Gasoline (Liters)  
= Jan. to June 2005 Ave. Monthly Gasoline Consumption less Monthly Gasoline Consumption.

*To compute for the equivalent Peso Savings, multiply the monthly liters savings in gasoline by the current average gasoline rates per liter (P/liter).*

Monthly Savings in Gasoline (liters.) x peso/liter equivalent for that period = equivalent Peso Savings

(b) Diesel

Monthly Savings in Blended Diesel (Liters) = Jan. to June 2005 Monthly Diesel Consumption less Present Month's Blended Diesel Consumption.

*To compute for the equivalent Peso Savings, multiply the monthly blended diesel in liters savings in diesel by the current average diesel rates per liters (P/liters).*

Monthly Savings in Blended Diesel (liters.) x peso/liter equivalent for that period = equivalent Peso Savings

The Annual saving shall be the cumulative saving for the twelve-month period

$\Sigma$  Monthly savings for 12 months = Annual Savings (Peso)

*Total Savings (P) = (Annual Electricity Savings + Annual Fuel savings)*

SECTION 3. *Allowable use of the ten percent (10%) savings.* – Consistent with the provisions of Section 3.2 of Administrative Order No. 110, as amended by Section 1 of Administrative Order No. 110-A, the use of

accumulated savings from the twelve-month period starting September 1, 2005 and every year thereafter for purposes stated in Section 4 below shall be allowed as follows:

- (a) For government entities that failed to attain the required minimum ten percent (10%) savings, the use of its savings shall be limited to only fifty percent (50%) of their accumulated savings in electricity consumption (in kWh) or petroleum products (in liters).
- (b) For government entities which attained ten percent (10%) savings or more, they may be allowed to use one hundred percent (100%) of their accumulated savings in electricity consumption (in kWh) or petroleum products (in liter).

SECTION 4. Use of *generated savings*. – Upon verification and recommendation of the EAT, generated savings shall be utilized to finance improvement in energy efficiency of the government entity/facility after which, succeeding/remaining equivalent Annual Peso savings may be used to give benefits and incentives to the employees in the following order of priority:

- (1) Upgrade/Lease/Purchase of vehicles to be used by employees as shuttle service;
- (2) Purchase/Lease of service vehicles to replace the old and inefficient units assigned to officials;
- (3) Citations or recognitions; and
- (4) Granting of other benefits to employees, consistent with the Collective Negotiation Agreement (CNA);

#### **RULE VI SYSTEM OF REWARDS**

SECTION 1. *Recognition*. – Government entities which attained at least ten percent (10%) savings in electricity and fuel consumption shall be awarded by the DOE, through the EAT, with a Certificate of

Recognition in order to motivate and inspire public servants to help implement the ECP. Hereunder are the criteria for the conferment of awards:

- (1) Effectiveness of strategies employed;
- (2) Level of energy savings in fuel and electricity;
- (3) Accurateness and clarity of the report;
- (4) Completeness of report; and
- (5) Promptness in submitting report.

SECTION 2. *Incentives*. – A government entity/government facility which has attained efficient level for its energy facilities and equipment, as well as supplies, may set aside and use succeeding/remaining equivalent Annual Peso Savings to continuously maintain the efficient operation of the building/facilities upon the discretion of the Agency Head. Thereupon, it shall submit copies or documentation to the EAT on the activities made on the use of the incentives.

#### **RULE VII INTER-AGENCY COORDINATION**

SECTION 1. *Inter-Agency Coordination*. The DOE, DBM, DTI, DENR, DPWH, NHA, DepED, DILG and PIA-OPS, shall have the following roles and responsibilities:

- (1) The DOE, through the Energy Utilization and Management Bureau (EUMB), shall serve as lead unit in the implementation of energy efficiency and conservation program. Further, EUMB, through the Energy Research and Testing Laboratory (ERTLS), and in cooperation with DTI, shall continue to oversee and implement the Energy Labeling Program for lamps and ballasts.
- (2) The DBM, through its Procurement Service, shall assist the government entities in the procurement of energy efficient supplies and equipment based on the DOE certified specifications and/

or ratings.

- (3) The DTI shall, in consultation with appropriate trade and industry associations, develop voluntary energy conservation programs through agreements with their respective members, which will target levels of reduction in electricity and petroleum products consumption following the provisions in this IRR. It shall likewise, provide complementary policies and activities to ensure that lighting products and other devices for that purpose shall meet the specifications under the Philippine National Standard (PNS), as well as applicable MEPS for consumer protection.
- (4) The DENR shall, in coordination with appropriate law enforcement agencies, enforce strictly the smoke-belching law for all vehicles. In addition, the DENR, through its Environmental Management Bureau (EMB) shall promulgate/ implement policies consistent with proper appliance (aircon, other energy fixtures) and lamp waste management.
- (5) The DPWH, in coordination with NHA and DepEd, shall implement the energy efficient building on government housing and school buildings respectively, in accordance with the Guidelines for the Energy Conserving Design of Buildings and Utility Systems and all other government buildings/facilities and other relevant infrastructure development projects.
- (6) The DILG shall devise action plans to encourage the Local Government Units (LGUs) on the use of efficient energy systems, including lighting and lighting products in their facilities.
- (7) The PIA-OPS shall launch a nationwide information dissemination campaign on energy conservation through broadcast

and print media, including production and distribution of materials related and consistent with the provisions of this IRR, that can be adopted at the family, community and industry level.

All agencies mentioned above shall submit monthly electricity and fuel consumption reports every 15th day of the month following the period to be reported and submit the annual ECP not later than the 15th day of January and every year thereafter, as stipulated under Rule IV, Section (2) item (2) and (4) of this IRR.

## **RULE VIII OTHER PROVISIONS**

**SECTION 1. *Compliance and Sanctions.*** – Non-compliance with the provisions of AO Nos. 103, 110, 110-A, 126 and 183 or any of the provisions of this IRR shall subject any official to administrative sanctions as provided by applicable laws and other rules and regulations.

**SECTION 2. *Amendment.*** – The DOE, with the concurrence of DBM, may amend or modify these Rules as may be deemed necessary.

**SECTION 3. *Separability Clause.*** – If any provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

**SECTION 4. *Effectivity.*** – This IRR shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done in the City of Manila, this 30th day of May, in the year of our Lord, Two Thousand and Eight.

**ANGELO T. REYES**  
DOE Secretary

**ROLANDO G. ANDAYA, JR.**  
DBM Secretary

## MEMORANDUM ORDER NO. 185

---

For the proper and effective implementation of the government's energy conservation program and austerity measures under Administrative Order No. 103 (s. 2004), Administrative Order No. 110 (s. 2004) and Administrative Order No. 126 (s.2005), an Energy Audit Team is hereby constituted composed of Senior Deputy Executive Secretary Waldo Q. Flores of the Office of the President and Undersecretary Peter A. Abaya of the Department of Energy. The Energy Audit Team has the following functions, among others:

1. Conduct energy surveys and audits, or provide technical assistance for the conduct of such surveys and audits, in all national government agencies (NGAs), including state universities and colleges (SUCs), government-owned and controlled corporations (GOCCs), government financial institutions (GFIs), and other government corporate entities (OGCEs) and their subsidiaries, and other instrumentalities under the Executive Department.
2. Ensure that each government entity designate a senior official as its Energy Conservation Officer who will be responsible for the government entity's compliance with the provisions of AO 110 and AO 126 as well as the development and implementation of energy efficiency and conservation measure.
3. Liaise with local government units and encourage them to implement energy efficiency and conservation measures proposed by the Department of Energy.
4. Coordinate with the Energy Conservation Officers for the proper and effective implementation of energy measures and require them to submit a monthly report of the measures taken and the results thereof. The monthly report shall be submitted not later than the 15<sup>th</sup> day following the reporting month.
5. Prepare and submit a summary report to the President, through the Executive Secretary, within five (5) days after the last reporting day.
6. Adopt other measures not contrary to existing laws, rules and regulations for the strict implementation of the energy conservation program and austerity measures.

This Order shall take effect immediately.

**(Sgd.) GLORIA MACAPAGAL-ARROYO**

Manila, August 23, 2005

## ADMINISTRATIVE ORDER NO. 183

### DIRECTING THE USE OF ENERGY-EFFICIENT LIGHTING/LIGHTING SYSTEMS (EELs) IN GOVERNMENT FACILITIES (PALIT-ILAWPROGRAM)

---

**WHEREAS**, under Section 2 of R.A. No. 7638, otherwise known as the “Department of Energy Act of 1992”, it is the declared policy of the State to ensure a continuous, adequate, reliable, and economic supply of energy through, among others, the judicious conservation, renewal and efficient utilization of energy, to keep pace with the country’s growth and economic development and to rationalize, integrate, and coordinate the various programs of the Government towards self-sufficiency and enhanced productivity in power energy without sacrificing ecological concerns;

**WHEREAS**, the conservation and efficient utilization of energy is one of the major strategies of the Government to realize energy self-sufficiency and reduce environmental impacts of energy generation and utilization as instituted in the Philippine Energy Plan (PEP) and the National Energy Efficiency and Conservation Program (NEECP);

**WHEREAS**, Administrative Order Nos. 103, 110 and 126 mandate a ten percent (10%) reduction in energy consumption in all government offices, including the designation of an Energy Conservation Officer;

**WHEREAS**, the use of energy efficient lighting systems (EELs), through the *Palit-Ilaw* Program, aims to promote lighting efficiency considering that lighting is used by all government facilities and EELs are the easiest to install/retrofit among other energy efficient equipment and fixtures;

**WHEREAS**, the adoption of EELs as a standard lighting system in government facilities will contribute to the realization of energy savings as well as pollution prevention and overall

environmental improvement;

**NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO**, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order the adoption of energy efficient lighting/lighting systems in government.

**SECTION 1. Mandatory Use of EELs.** – All departments, bureaus, offices, agencies and instrumentalities of the Philippine Government, including National Government Agencies, State Universities and Colleges, Government Owned and Controlled Corporations, Government Financial Institutions, and other Government Entities are hereby mandated to use EELs in all buildings and facilities, as well as in all projects financed by the Government, such as housing and school building projects.

1.1 The Energy Conservation Officer (ECO) of each government entity/agency shall, within one month from the effectivity of this Administrative Order, formulate a phased-in lighting replacement program in their respective existing facilities to be submitted to the DOE; unless the concerned government entity/agency already uses EELs in which case it shall submit a compliance report to the DOE. The phased-in lighting replacement program shall be implemented within one year from the effectivity of this Administrative Order.

**SECTION 2. Cooperating Agencies.** – The Department of Energy (DOE), through the Energy Utilization and Management Bureau (EUMB), shall take the lead in implementing this Administrative Order and shall take

appropriate measures and necessary actions to ensure compliance with the same. The DOE shall be supported by the following government agencies and other agencies as may later be identified:

- 2.1 The Department of Trade and Industry (DTI) shall provide complementary policies and activities to ensure that lighting products meet the specifications under the Philippine National Standards (PNS) as well as applicable Minimum Energy Performance Standards (MEPS) for consumer protection.
- 2.2 The Department of Budget and Management (DBM) shall facilitate the approval of necessary funds for the implementation of this Administrative Order and, through the Government Policy and Procurement Board (GPPB) and Procurement Services, allow only energy efficient lighting products for government procurement, with exceptions provided for under the Guidelines for Energy Conserving Design of Buildings.
- 2.3 The Department of Environment and Natural Resources (DENR), through the Environment Management Bureau (EMB), shall promulgate/implement policies consistent with proper lamp waste management.
- 2.4 The Department of Public Works and Highways (DPWH) shall integrate the use of EELs in planning and development for government buildings/facilities and other infrastructure development projects.
- 2.5 The Department of Interior and Local Government (DILG), pursuant to its general supervision over local government units (LGUs), shall strongly encourage the LGUs to contribute to the objective of this Administrative Order by using EELs in their facilities.

2.6 The Philippine Information Agency (PIA) shall include energy efficiency and conservation in lighting in its media campaigns.

**SECTION 3. Implementation.** – The DOE is hereby authorized to issue additional implementing rules and regulations (IRR) from time to time, as may be necessary, to implement this Administrative Order.

**SECTION 4. Use of Savings.** – Savings generated from the use of EELs may be utilized as follows in accordance with Administrative Order No. 110, as amended by Administrative Order No. 110-A and its IRR:

- 4.1 For Government entities that failed to attain the required minimum ten percent (10%) savings, the use of its savings shall be limited to only fifty percent (50%) of its accumulated savings in electricity consumption (in kWh) or petroleum products (in liters);
- 4.2 For government entities that have attained ten percent (10%) savings or more may be allowed to use one hundred percent (100%) of its accumulated savings in electricity consumption (in kWh) or petroleum products (in liters); and
- 4.3 Upon verification and recommendation of EUMB, part of the generated savings can be utilized to finance improvements in energy efficiency.

**SECTION 5.** Failure to follow the directives of this Administrative Order within 30 days from effectivity thereof shall subject concerned officials to administrative sanctions pursuant to existing laws, rules and regulations.

**SECTION 6. Repealing Clause.** – All orders, circulars, rules and regulations and other issuances or parts thereof which are inconsistent with the provisions of this Administrative Order are hereby amended, modified or repealed accordingly.

**SECTION 7. Effectivity.** – This Administrative Order shall take effect immediately upon publication in a newspaper of general circulation.

Done in the City of Manila this 9th day of July, in the Year of our Lord, Two Thousand and Seven.

## DEPARTMENT CIRCULAR NO. 2003-12-011

### ENJOINING ALL DISTRIBUTION UTILITIES TO SUPPLY ADEQUATE, AFFORDABLE, QUALITY AND RELIABLE ELECTRICITY

**WHEREAS**, Section 2 of Republic Act No. 9136, also known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, declared as a policy of the state, among others, “[t]o ensure the quality, reliability, security and affordability of the supply of electric power;”

**WHEREAS**, pursuant to Section 17 of EPIRA, the Department of Energy has the mandate, among others:

- (a) “[t]o ensure the reliability, quality, and security of supply of electric power” (Sec. 37 (d));
- (b) “[t]o encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources” (Sec. 37 (e) (i));
- (c) [i]n consultation with other government agencies, to promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric Supply” (Sec. 37 (e)(iii));
- (d) “[t]o develop policies and procedures and, as appropriate- promote a system or energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements” (Sec. 37

(i)); and

- (e) “[t]o monitor private sector activities relative to energy projects in order to attain goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws. *Provided*, that the Department of Energy shall endeavour to provide for an environment conducive to free and active private sector participation and investment in all energy activities” (Sec. 37 (j));

**WHEREAS**, pursuant to Section 6 of EPIRA, the “generation of electric power, a business affected with public interest, shall be competitive and open”;

**WHEREAS**, pursuant to Section 47 (j) of EPIRA, the National Power Corporation (NPC) “may generate and sell electricity only from the undisposed generating assets and IPP [Independent Power Producer] contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers”;

**WHEREAS**, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, “shall have the obligation to supply electricity in the least cost manner to its captive market subject to the collection of retail rate duty approved by the Energy Regulatory Commission (ERC)”;



**WHEREAS**, pursuant to Sections 4 (nn) and 37 (c) of EPIRA, the Department of Energy has formulated prepared and updated the ten-year Power Development Program (PDP) in coordination with generation, transmission and distribution utility companies, which indicated a critical reserve requirement in various regions of the country in the upcoming five years of the planning horizon;

**WHEREAS**, the Department of Energy through various communication programs has encouraged and campaigned for the entry and removal of barriers to entry of private sector participation in the generation of electricity in line with the PDP;

**NOW, THEREFORE**, the Department of Energy is issuing this Circular to all distribution utilities:

**SECTION 1. Reiteration of State Policy.** – All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective franchise areas to meet their obligations as a distribution utility.

**SECTION 2. Compliance.** – While the NPC and the National Transmission Corporation or TRANSCO are pursuing government projects to improve the supply and delivery of electric power in the national grid, all distribution utilities must submit to the Department no later than 15th of March every year the annual 5-year Distribution Development Plan pursuant to Section 4 (p), Rule 7 of the Implementing Rules and Regulations of EPIRA. The Distribution Development Plan shall include, among others all abstract of the terms and conditions of power supply contracts with NPC's existing and available supply, and, where NPC's supply is not available and sufficient, the power supply contracts with private power producers to augment the power supply in their franchise areas and to assure that power interruptions are minimized. The proscription prescribed under Section 45 of EPIRA on "Cross

Ownership, Market Power Abuse and Anti-Competitive Behavior" shall be strictly followed by all distribution utilities. The Department shall issue within (30) days from effectivity of this Circular separate guidelines for the preparation of the Distribution Development Plan.

**SECTION 3. Assistance to Electric Cooperatives (ECs).** – To assist the ECs in their power supply contract negotiations, the National Electrification Administration (NEA) shall provide training programs to ECs and other necessary activities necessary to provide reliable and quality service to all the consumers. Towards this end, NEA shall submit to the Department within thirty (30) days from the effectivity of this Circular the action plan to assist the ECs, to include, but not limited to, financial management services, funding arrangements and other structures that will support the ECs ability to enter into power supply contracts. Thereafter the Department shall issue the appropriate implementing guidelines for this purpose.

**SECTION 4. Enforcement.** – Towards achieving the objectives of EPIRA and this Circular, any distribution utility which fails to comply shall be immediately recommended by the Department for appropriate sanction, fines and/or penalties, including modification and revocation of certificates of public convenience and/or necessity, license or permits of franchised distribution utilities, to the ERC, pursuant to Sections 45 (p) and 46 of EPIRA.

**SECTION 5. Effectivity.** – This Circular shall take effect immediately a day after its posting in the Department's website and complete publication in a newspaper of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 5 December 2003.

**VICENTE S. PEREZ**  
Secretary

## DEPARTMENT CIRCULAR NO. 2004-02-002

PRESCRIBING THE GUIDELINES FOR THE FORMULATION OF A FIVE-YEAR DISTRIBUTION DEVELOPMENT PLAN PURSUANT TO SECTION 2 OF DEPARTMENT OF ENERGY CIRCULAR NO. DC 2003-12-011, ENTITLED "ENJOINING ALL DISTRIBUTION UTILITIES TO SUPPLY ADEQUATE, AFFORDABLE, QUALITY AND RELIABLE ELECTRICITY"

---

**WHEREAS**, under Section 2 of Republic Act (RA) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or EPIRA, it is declared, among others, the policy of the State to ensure quality, reliability, security and affordability of the supply of electric power;

**WHEREAS**, pursuant to Section 37 (c) of EPIRA, the Department of Energy (DOE) is mandated to prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan (PEP);

**WHEREAS**, the PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the DOE;

**WHEREAS**, Section 23 of the EPIRA, required distribution utilities (DUs), among other functions, to prepare and submit to the DOE their annual distribution development plans and in the case of electric cooperatives, to submit such plans through the National Electrification Administration (NEA);

**WHEREAS**, it is provided under Section 4 (p), Rule 7 of the Implementing Rules and Regulations of the EPIRA (EPIRA-IRR) that DUs shall prepare and submit to the DOE an annual five year-distribution development plan (DDP) not later than the fifteenth (15th) of March of every year for integration with the PDP and PEP;

**WHEREAS**, there is an imperative need to institutionalize the formulation process of the DDP consistent with the policy and structural reforms envisioned in the EPIRA;

**WHEREAS**, in compliance with DOE Circular No. DC 2003-12-011 issued on December 5, 2003, the DDP of a DU shall include, among others, an abstract of the terms and conditions of power supply contracts with National Power Corporation (NPC) existing and available supply, and, where NPC supply is not available and sufficient, the power supply contracts with private power producers to augment the power supply in their franchise areas and to assure that power interruptions are minimized;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES**, the DOE hereby promulgates the following Guidelines on the formulation of the five-year DDP of each DU:

### **SECTION 1. Guiding Principles.**

In compliance with EPIRA and its IRR, these Guidelines are issued for:

- (a) the integration of the consolidated DDP to the PDP and PEP which are prepared and updated annually;
- (b) the monitoring of private sector activities relative to energy projects in order to attain goals of restructuring, privatization, and modernization of the electric power industry;

- (c) the encouragement of DUs to provide adequate and reliable electric supply;
- (d) the provision of information, for investment promotion and project prioritization; and
- (e) the determination of infrastructure requirements to ensure reliability of supply at the distribution level.

## SEC. 2. Scope of Application.

These Guidelines shall apply to any “entity that owns, operates, or controls one or more distribution systems such as but not limited to”:

- (a) Electric Cooperatives (ECs);
- (b) Privately-Owned Distribution Utilities;
- (c) Local Government Unit Owned-and-Operated Distribution Systems;
- (d) Entities duly authorized to operate within the economic zones (EZs); and
- (e) Other duly authorized entities engaged in the distribution of electricity.

## SEC. 3. Contents of the DDP.

The DDP shall contain the following detailed information:

- (a) **Objectives.** Consistent with the Five-Year DDP of the DUs, this part shall provide a statement of the long-term and immediate objectives of the utility to meet their obligations. The long-term objective shall reflect the desired outcomes of the DUs while pursuing to improve the supply and delivery of electricity to the end-users in view of the overall electric power industry sector. The immediate objectives, on the other hand, shall indicate its targeted short-term outcomes of the utility while

providing the required delivery services in their respective franchised area/s.

- (b) **Strategies and/or approaches to attain the objectives.** This component shall identify and describe the strategies and/or approaches that will guide the DUs in their operation.

- (c) **Technical and Economic Analyses.**

This portion of the DDP shall present a summary of the technical and economic analyses in demand forecast, supply expansion plan, and expansion of the distribution system including the reactive power compensation plan and other distribution reinforcement plan. The analyses shall make use of the forecasts and assumptions data. It should identify operational limitations or constraints which may likely lead to problematic areas in the future. It should also include the following:

- (i) Energy and Demand forecasts;
- (ii) Sub-transmission capacity expansion;
- (iii) Distribution substation siting and sizing;
- (iv) Distribution feeder routing and sizing;
- (v) Distribution Reactive Power Compensation Plan; and
- (vi) Other Distribution reinforcement plans.

- (d) **Power Supply Contracts.** This portion shall consist of the power supply contract/s or agreement/s entered into by the DUs with NPC and other generation companies. The contract shall contain terms and conditions which shall include, but not limited to the following:

- (i) Contracted Demand/Energy;

- (ii) Contract price;
  - (iii) Time/Day of Delivery;
  - (iv) Load Factor; and
  - (v) Price Settlement Mechanism
- (e) **Profile of Barangays to be energized.**  
In this section, the reporting DUs shall provide the complete list of barangays within the DUs' franchise area scheduled for energization during the five-year planning period, as well as those barangays declared by DUs as unviable and unable to provide electricity service within the next three (3) years. It shall also contain information on project cost, fund source, power source/technology, and potential household connection, among others.

**SEC. 4. Adoption and Procedures in the Preparation of DDP.**

- (a) The DOE hereby adopts the following documents, namely:
  - (i) Forms and Instructions for the Preparation of the DDP of Philippine Distribution Utility (Appendix A);
  - (ii) DOE-EPIMB Form-03-001 (Appendix B); and
  - (iii) DOE-EPIMB Form-03-002 (Appendix C).

For purposes of uniformity of data, all DUs shall be guided by Appendix A in accomplishing Appendix B and Appendix C.
- (b) In addition, a separate sheet on power supply contract incorporating the terms and conditions shall also be submitted.
- (c) The crafting of the Updated DDP must take into account all the data requirements prescribed under Chapter

6.2.5 (Preparation of Distribution Development Plan) of the Philippine Distribution Code as a requisite by the Distribution Management Committee (DMC) and NEA.

- (d) It shall be required that the DDP to be submitted to DOE shall have consistency in content with other DDP to be submitted to DMC and NEA.
- (e) The DDP preparation must, likewise, ensure coherence with the data requirements of the existing and other instrumentalities as may be found valid in the future undertakings to ensure continuous supply of electric power to end consumers.

**SEC. 5. Plan Formulation Process.**

- (a) The formulation of the plan starts formally with the issuance of these Guidelines to all DUs and concerned government agencies. The DUs shall be responsible for distribution planning, including analyzing the impact of the connection of new facilities, expansion of the distribution system, and identifying and correcting problems on power quality, system loss and reliability.
- (b) The DDP shall be prepared by each DU with inputs from all users and other power sectors (as may be required). A working group may be created by the DUs, essentially to commence the initial drafting of the DDP. Each DU shall be responsible in the processing of the data provided by users and ensure cohesiveness in forecasts and reliability of the assumptions used.
- (c) After the completion of the first draft, a DU may need to convene its own committee that will provide guidance and oversee the preparation and subsequent endorsement of the DDP to DOE. Subsequently, for validation purposes,

consultations with the concerned end-users and stakeholders shall be undertaken by the DU.

- (d) The DOE technical staff, whenever is needed, shall provide assistance to the working group in the formulation of the DDP.

#### **SEC. 6. Repealing Clause.**

Any rule or regulation inconsistent with the provisions of this Circular is hereby repealed

and modified accordingly.

#### **SEC. 7. Effectivity.**

This Circular shall take effect immediately a day after its publication in a newspaper of general circulation.

**VICENTE S. PEREZ, JR.**  
Secretary

### **DEPARTMENT CIRCULAR NO. 2008-06-0003**

CREATING A TECHNICAL WORKING GROUP TO TAKE ACTION IN ADDRESSING THE CURRENT POWER ISSUES IN THE COUNTRY

---

**WHEREAS**, the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry pursuant to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act (EPIRA) of 2001”. The DOE is further authorized under Section 37 (e) (ii) of the *EPIRA* to facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;

**WHEREAS**, Section 2 (f) of *EPIRA* declares it a policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

**WHEREAS**, the DOE under Section 5 (p) of R.A. 7638 or the *DOE Act of 1992* as amended by *EPIRA* is authorized to formulate rules and regulations as may be necessary to implement the objectives of the said Law, as amended;

**WHEREAS**, Section 1 (r), Rule 3 of the *EPIRA-IRR* provides that it is the function of the DOE to exercise such other powers as may be necessary or incidental to attain the objectives of the *EPIRA*;

**WHEREAS**, the DOE is likewise mandated to take the initiative to devise policies, plans and programs to achieve, among others, adequate, reliable and affordable supply of electricity, in cooperation with other government agencies and electric power industry participants and electricity end-users, taking into consideration first and foremost the welfare of the public and promoting, at the same time, partnership with the private sector;

**WHEREAS**, the continuous rise in the cost of electricity is affecting the welfare of the people and causing unease to the marginalized sectors of the society;

**WHEREAS**, Her Excellency President Gloria Macapagal-Arroyo, during the Cabinet Meeting held on June 10, 2008, in recognition of the above circumstances, mandated all government agencies to explore and adopt the necessary measures to mitigate the impact on increasing cost of electricity. To execute the said directives the DOE was designated and authorized to take the lead and create a Technical Working Group (TWG) to address the current issue on power rate reduction;

**NOW, THEREFORE,** in consideration of the foregoing, a TWG is hereby created for the aforementioned purposes and in accordance with the terms provided in this Department Circular.

**SECTION 1. Mandate.** – Pursuant to the directive of the President during the Cabinet Meeting of June 10, 2008, there is hereby created a Technical Working Group (TWG) which the DOE Secretary shall lead and with the following government agencies together with the different stakeholders in the electric power industry as members:

- (a) National Economic Development Authority (NEDA)
- (b) Department of Finance (DOF)
- (c) Department of Justice (DOJ)
- (d) Department of Trade and Industry (DTI)
- (e) Department of Interior and Local Government (DILG)
- (f) Department of Budget and Management (DBM)
- (g) Philippine Economic Zone Authority (PEZA)
- (h) One representative each from the industrial sector, electric power industry associations, and other private sector participants as determined by the TWG.

Pursuant to Economic Managers Meeting held on 19 June 2008, all the Department Secretary Members agreed to designate their respective permanent representative of an Undersecretary level to the TWG.

The TWG shall perform its mandate with the objective of ensuring that the declared policies of the State under *EPIRA* are properly achieved and implemented.

**SEC. 2. Scope of Responsibilities.** – The TWG shall take action on the issues that currently affect the power sector including, but not limited to, the following:

- (a) Review the VAT on systems loss
- (b) Review of the systems losses/caps on recoverable systems losses
- (c) Review and renegotiation of power supply contracts
- (d) Review and rationalize Lifeline Policies and Subsidies
- (e) Implementation of Open Access and Retail Competition within Economic Zones
- (f) Review of Wholesale Electricity Spot Market (WESM) Rules
- (g) Study on proposed NPC flat rate of Php 4.11 per kWh
- (h) Implementation of Time of Use Rates and Demand Side Management (DSM) Program at the distribution level
- (i) Review power purchasing practices of distribution utilities
- (j) Audit the operation of National Power Corporation and TransCo in relation to rates
- (k) Review and validate the operation of Distribution Utilities in coordination with the Energy Regulatory Commission
- (l) Implementation/rationalization of National Wealth Tax provisions on benefits to Host LGUs/Regions
- (m) Conduct diagnostics of the status and manner of *EPIRA* implementation of all relevant stakeholders

**SEC. 3. Technical Support Staff.** – The TWG shall also constitute an Inter-Agency Technical Support Staff (IATSS) composed of representatives who have direct knowledge and expertise on the power issues, and duly nominated by the TWG members. The IATSS shall provide the necessary support and other related services to the TWG and coordinate with the TWG Secretariat.

To ensure continuity, the IATSS shall work on a permanent basis for the duration of the implementation of the TWG’s program. They shall be authorized to avail themselves of the facilities and communication networks of other member agencies of the TWG as may be necessary and in addition to what they may have.

Whenever necessary, the TWG may also direct other concerned agencies for additional membership in the TWG Secretariat or the IATSS. The TWG may likewise appoint specific Leader of the Technical Support Staff depending on the issues being addressed.

**SEC. 4. Secretariat.** – The Electric Power Industry Management Bureau of the

Department of Energy (DOE-EPIMB) shall act as the TWG Secretariat and shall provide administrative support and facilities for central coordination and monitoring of the TWG’s activities.

**SEC. 5. Meetings.** – The TWG shall meet regularly once every two weeks and as often as necessary with due consideration to the exigency of the issues at hand.

**SEC. 7. Budget.** – The activities of the TWG and its sub-groups including the TWG Secretariat shall be funded through a supplemental budget, duly approved by the Department of Budget and Management.

**SEC. 8. Effectivity.** – This Department Circular shall take effect immediately upon publication in two newspapers of general circulation.

Fort Bonifacio, Taguig City, 23rd day of June, 2008.

**ANGELO T. REYES**  
**Secretary**

## DEPARTMENT CIRCULAR NO. 2009-01-0001

DIRECTING DOE ATTACHED AGENCIES, ALL ELECTRIC POWER INDUSTRY PARTICIPANTS, CONSUMERS AND VARIOUS STAKEHOLDERS TO ADOPT AND IMPLEMENT CONTINGENCY MEASURES TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY IN VISAYAS GRID PARTICULARLY IN THE ISLANDS OF CEBU, NEGROS AND PANAY

---

**WHEREAS**, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or EPIRA, declared as a policy of the State, among others, to ensure the quality, reliability, security and affordability of the supply of electric power, to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power, and to encourage the efficient use of energy and other modalities of demand side management.

**WHEREAS**, pursuant to Section 37(h) of EPIRA, the Department of Energy (DOE) exercises supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of Republic Act No. 7638, known as the "Department of Energy Act of 1992", as amended by EPIRA and that the DOE is authorized under Section 5(k) thereof to formulate rules and regulations as may be necessary to implement the objectives of said R.A. No. 7638, as amended;

**WHEREAS**, Section 37 of EPIRA further provides for the following powers and functions of DOE among others:

"x x x

- (d) Ensure the reliability, quality and security of supply of electric power;
- (e) Following the restructuring of the electricity sector, the DOE shall, among others:

- (i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
- (ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;
- (iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply;

xxx

- (i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage energy participants to provide adequate capacity to meet demand including among others, reserve requirements;

xxx

- (m) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy."

**WHEREAS**, the cooperation of all electric power industry participants and various stakeholders is indispensable in achieving a



reliable and secure supply of electricity in the country;

**WHEREAS**, the current power situation in the Visayas Grid demonstrated the need for additional capacity as certified by the System Operator (SO) of the National Transmission Corporation to meet the increasing demand and reserve;

**WHEREAS**, the new generating plants in the Visayas Grid as reported by the private proponents to the DOE are expected yet to come on stream by 2010 and 2011;

**WHEREAS**, the availability and adequacy of electricity in the Visayas Grid at this time is vested with public interest such that it is incumbent upon the government to take the necessary measures to ensure the continuous operation of vital industries in the region by ensuring that there will be no interruptions in the delivery of electricity;

**NOW, THEREFORE**, premises considered, the DOE is issuing this Circular with the objective of ensuring that the declared policies of the State under EPIRA are properly achieved and implemented:

**SECTION 1. Scope and Coverage.** This Circular shall apply to all DOE-attached agencies namely, the National Power Corporation (“NPC”), National Transmission Corporation (“TransCo”) through its System Operator, Power Sector Assets and Liabilities Management Corporation (PSALM), Philippine Electricity Market Corporation (PEMC), National Electrification Administration (“NEA”), Philippine National Oil Company (PNOC) and relevant Visayas stakeholders such as Distribution Utilities (DUs) including Electric Cooperatives (ECs) in the Visayas grid, independent Power Producers (IPPs) or other power generation companies and major power users, shall collaborate in ensuring the provision of adequate and reliable supply electric power in the Visayas Grid.

Further, this Circular provides for the power supply contingency measures in the Visayas grid to include, but not be limited to, a supply augmentation program until new generating capacities come on stream. This also serves as reiteration of the existing mandates of the agencies and industry participants under the energy sector.

**SECTION 2. Responsibilities.** In addition to the functions and responsibilities of the agencies and entities under their respective charters and under existing laws, rules and regulations, they are further directed to closely coordinate with the Department and extend their full support in adopting the following measures in the Visayas Grid. The DOE being the agency tasked to supervise the oversee the electric power industry, shall be the lead agency in ensuring that all plans and programs to achieve the purposes of this Circular are properly carried out.

#### **NPC**

- (a) Ensure that all power plants including those of its contracted IPPs shall operate in accordance with the declared individual dependable capacities. All maintenance outage of power plants shall be in accordance with the Grid Operation and Maintenance Program (GOMP) under the Philippine Grid Code. A report containing the list of plants and their operational status should be submitted on a monthly basis to DOE, through the Electric Power Industry Management Bureau (DOE-EPIMB), with a copy furnished the SO and Market Operator (MO).
- (b) Secure oil-based power plants/IPPs to meet the average required 30-day fuel oil inventories/supply. For this purpose, oil-based power plants/IPPs shall submit to DOE-EPIMB, on a monthly basis, a report on fuel inventory based on typical load dispatch and fuel consumption.

- (c) Provide an average 45-day coal inventory in all coal power plants. For this purpose, an inventory report should be submitted to DOE-EPIMB on a monthly basis based on typical load dispatch and fuel consumption.
- (d) Guarantee the readiness of all oil-based power plants for operation;
- (e) Inform and update NPC customers on the power supply situation, and the corresponding load curtailment schedules.

**TransCo/National Grid Corporation of the Philippines (NGCP)**

- (a) Implement maintenance of major transmission line/s and substation equipment that will add to load limitation to generating plan/unit only during weekends and non-working holidays, and perform system tests and Ancillary Services certification tests only during weekends and non-working holidays. A monthly report should be submitted to DOE for this purpose.
- (b) Effect load curtailment in distribution utilities (private utilities and ECs) without specific contracts or supply arrangements with NPC/PSALM and other generation companies. For this purpose, the “no contract, no connection” policy shall be strictly enforced.
- (c) Ensure that the manual load dropping schedule is updated and in place.
- (d) Enforce strictly the disconnection policy, in coordination with NPC Report immediately to the DOE Secretary and the DOE designated focal person, in the most expedient manner available, if there are any changes in the normal operation of the power system.

**PSALM**

- (a) Determine, together with DOE and NPC, if there is a resulting instability in the supply of power in the continued execution of the current privatization program being implemented by PSALM inasmuch as the 70% of NPC’s generating assets has been bidded out. This is for purposes of Section 71 of EPIRA.
- (b) Coordinate the required operation of disposed assets in the Visayas Grid with the new owners, as the case may be.

**NEA**

- (a) Inform properly the ECs of the situation and its possible impact to the system. Towards this end, NEA shall render appropriate assistance to the ECs in ensuring their readiness to (i) respond to any event arising from the problem and (ii) take appropriate measures to mitigate the problem by entering into any power supply contracts and/or (iii) assist ECs in the development of available renewable energy sources.
- (b) Advise ECs with customers having self-generating capability to effect necessary preparations to ensure readiness of the embedded generating sets participating in the supply augmentation program of the government.
- (c) Assist ECs in promoting energy conservation measures for the electricity consumers.
- (d) Submit monthly reports to DOE on the status of the regular activities undertaken together with the ECs in the performance of their responsibilities under this Circular.

NEA is hereby directed to submit to DOE within two weeks after the effectivity of this circular a detailed plan and program to implement its responsibility.

## PEMC

- (a) Continue with its preparations for the possible launch of the commencement of the commercial operations of the WESM in the Visayas.
- (b) Submit to the DOE a detailed plan to implement the transition to the commercial operations of the WESM.

## DUs/ECs

- (a) Take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their franchise areas to meet their obligations as distribution utility.
- (b) Limit their actual demand to their contracted demand/load, particularly during peak hours.
- (c) Submit regularly to DOE the prescribed Distribution Development Program (DDP) in compliance with DOE Circular No. DC 2003-012-011 to monitor the existing available and future supply requirements.
- (d) Submit to DOE customers having self-generating capability to effect necessary preparations to ensure readiness of their generating sets in case of participation in the Supply Augmentation Program of the government.

In addition, the DOE declares the following:

### SECTION 3. Supply Side Management.

A Supply Augmentation Program is hereby introduced.

- a) The PEMC, in coordination with NGCP/SO, is hereby directed to formulate a comprehensive Supply Augmentation Program (the "Program") including the timetable of activities, which shall be submitted for approval by the DOE within two weeks from the effectivity of this Circular. The Program shall

be implemented in the Visayas Grid immediately subject to the following conditions:

- (i) Consistent with the objectives of the government's energy development program and shall comply with the provisions of the EPIRA, its implementing Rules and Regulations and, in applicable cases, the WESM Rules.
  - (ii) Include, among other things, mechanisms for participation and provision of power supply by embedded generators and other self-generation facilities; demand-side participation such as the provision of interruptible load as ancillary service; and the corresponding pricing and compensation mechanism and, if appropriate, the provision of incentives for participants.
  - (iii) Specify the duration for the implementation of the Program, the criteria or grounds for its termination.
- (b) Upon approval by the DOE of the Program, PEMC, in coordination with the NGCP-SO, shall be responsible for the implementation of the same, and, either individually or jointly, shall –
    - (i) Secure the necessary approvals and comply with necessary regulatory requirements, including but not limited to the approval by the Energy Regulatory Commission (ERC) and other relevant government agencies on the implementation of the Program or of any mechanism or procedure contained therein, such as, but not limited, to scheduling, dispatch, pricing and compensation methodologies.
    - (ii) Formulate rules, guidelines and procedures for the implementation of the Program, in consultation

with the electric power industry participants.

- (iii) Establish the criteria, requirements and qualifications for participation in the Program, and to register qualified participants.
  - (iv) Establish the provision of the necessary infrastructure, facilities and equipment including development of protocols or any mechanism as may be necessary to implement the Program. For this purpose, secure the necessary regulatory approvals for the cost recovery mechanism by NGCP-SO and PEMC of the costs incurred for the development, establishment and operations of the Program.
  - (v) Implement the Program, in accordance with the approved rules, procedures and guidelines; and
  - (vi) Submit monthly reports to the DOE as well as other related reports as may be required from time to time.
- (c) All electric industry participants are directed to participate in the Program, in accordance with this Circular, and the rules, guidelines and procedures as may be issued and promulgated by the NGCP-SO, PEMC and the DOE from time to time.

#### **SECTION 4. Renewal Energy Development.**

The Renewal Energy Management Bureau, as created by Republic Act No. 9513 (the "Renewable Energy Act of 2008"), or the responsible DOE Bureau/s or entities involved in the renewable energy resource development shall:

- (a) Assess the maximum contribution of renewable energy resources for power generation to the Visayas Grid.
- (b) Require the renewable energy service contractors to prepare plans and ensure readiness to maximize the use

of renewable energy sources to ensure stability of power supply.

#### **SECTION 5. Demand Side Management.**

The Energy Utilization Management Bureau of the DOE, in coordination with other concerned DOE units and relevant entities, is hereby directed to develop a market-oriented demand side management program which shall likewise be submitted to the DOE Secretary for approval.

All electric power stakeholders herein mentioned are encouraged to adopt the demand side management program to be developed as prescribed herein including, but not limited to, the engagement of energy service companies (ESCOs) to achieve the purposes of this Circular.

#### **SECTION 6. Regulatory Support.**

The DOE and the Energy Regulatory Commission (ERC) shall closely coordinate in order that the applications filed with the ERC to specifically address the Visayas grid supply issues be duly resolved and acted upon expeditiously through the use of modes such as, but not limited to, Section 4(e), Rule 3 of the Implementing Rules and Regulations of EPIRA as amended in June 2007.

**SECTION 7.** Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

#### **SECTION 8. Effectivity and Publication.**

This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation.

This Circular shall remain in effect until otherwise revoked.

Taguig, Metro Manila, 16 January 2009.

**ANGELO T. REYES**  
Secretary

## DEPARTMENT CIRCULAR NO. 2010-03-0003

DIRECTING ALL POWER GENERATION COMPANIES, THE TRANSMISSION SERVICE PROVIDER, AND ALL DISTRIBUTION UTILITIES TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY IN THE COUNTRY

---

**WHEREAS**, Section 5 of Republic Act No. 7638, as amended by Section 37 of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA), mandates the Department of Energy (DOE) to, among others, 1) ensure the reliability, quality and supply of electric power, and 2) establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or non-conventional;

**WHEREAS**, the DOE is mandated to develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

**WHEREAS**, the DOE is also mandated to monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: Provided, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

**WHEREAS**, the DOE is further enjoined to formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

**WHEREAS**, Section 6 of the EPIRA provides that the generation of electric power is a

business affected with public interest and shall be competitive and open;

**WHEREAS**, as a result of the privatization of Government's power generation assets, the generation of electricity in Luzon is now dominated by the private sector and eventually, the same situation will occur in Visayas;

**WHEREAS**, a Generation Company has an obligation to meet the technical and financial operating criteria ensuring compliance with standards for among others, security, reliability, unplanned outages and provision of ancillary services and shall operate in accordance with such operational criteria;

**WHEREAS**, under the EPIRA, the distribution of electricity, a business affected with public interest, is a regulated common carrier business requiring a national franchise, which franchise may be revoked by Congress upon recommendation of the DOE and/or the Energy Regulatory Commission (ERC);

**WHEREAS**, Section 9 of the EPIRA mandated the National Transmission Company and/or its Concessionaire, presently the National Grid Corporation of the Philippines (NGCP) among others, to provide open and non-discriminatory access to its transmission system to all electricity users, ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operations and maintenance of the grid as set forth in a Philippine Grid Code (PGC), and improve and expand its transmission facilities, consistent with the PGC and the Transmission

Development Plan (TDP) to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided*, That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;

**NOW, THEREFORE**, from the foregoing premises and pursuant to the mandate of the DOE under the EPIRA, this Circular is hereby promulgated:

**SECTION 1. Scope.** – This Circular shall apply to all Generation Companies and Distribution Utilities in the country as defined in the EPIRA as well as the National Transmission Corporation (TRANSCO) or its concessionaire, presently the NGCP which is also referred to as the System Operator (SO);

**SECTION 2. Responsibilities of Generation Companies.** – Pursuant to the EPIRA, all Generation Companies shall ensure the availability of its generation facilities at all times subject only to technical constraints duly communicated to the SO in accordance with existing rules and procedures. For this purpose, Generation Companies shall have the following responsibilities:

2.1 All Generation Companies shall operate in accordance with their Maximum Available Capacity. For this purpose, the Maximum Available Capacity shall be equal to the registered maximum capacity of the (aggregate) unit less (1) forced unit outages, (2) scheduled unit outages, (3) de-rated capacity due to technical constraints which include (a) plant equipment-related failure and ambient temperature, (b) hydro constraints which pertains to limitation on the water elevation/turbine discharge and megawatt output of the plant and (c) geothermal constraints which pertain to capacity limitation due to steam quality (chemical composition, condensable and non-condensable gases), steam pressure

and temperature variation, well blockage and limitation on steam and brine collection and disposal system.

All Generation Companies shall submit its Maximum Available Capacity and operational status on a monthly basis to the DOE-Electric Power Industry Management Bureau (EPIMB), with a copy furnished to the SO and the Philippine Electricity Market Corporation (PEMC);

2.2 Oil-based generation companies shall maintain an adequate in-country stocks of fuel equivalent to at least 15-days running inventory which includes shipments in transit. For this purpose, all oil-based generation companies shall submit to DOE-EPIMB, on a monthly basis, a report on fuel inventory based on typical load dispatch and fuel consumption;

2.3 Coal power plants shall ensure the required 30-day coal running inventory which includes shipments in transit. An inventory report shall be submitted to the DOE-EPIMB, on a monthly basis, based on typical load dispatch and fuel consumption schedule;

2.4 During the scheduled maintenance of Malampaya natural gas facilities, all affected generation companies shall maintain at least 15-days running inventory of the alternative fuel and shall operate at full capacity;

2.5 All generation companies with natural gas fired, geothermal and hydroelectric generating plants shall submit to the DOE a monthly report on the current status and a forecast of the energy sources of its generating plants;

2.6 All Generation Companies must notify and coordinate with the System Operator of any planned activity such as shutdown of its equipment in accordance with the PGC;

- 2.7 Immediately inform the DOE of any unexpected shutdown or derating of the generating facility or unit thereof. The report shall include a description of the causes of the unexpected shutdown and estimated resumption;
- 2.8 Generating Companies shall seek prior clearance from the DOE regarding any plans for deactivation or mothballing of existing generating units or facilities critical to the reliable operation of the Grid; and
- 2.9 Strictly abide by the provisions of the PGC.

**SECTION 3. Responsibilities of TRANSCO and/or its concessionaire.** – Pursuant to its mandate under the EPIRA, TRANSCO and/or its concessionaire, presently NGCP, shall:

- 3.1 Ensure that transmission facilities pursuant to the TDP approved by the DOE are adequately provided and available for access by all electricity users in all areas of the grid. The NGCP, in the preparation of the TDP shall include all the transmission requirements of the generation companies, distribution utilities and suppliers. Any necessary modifications/adjustments duly endorsed and approved by the DOE shall be incorporated in the TDP by the NGCP prior to its finalization;
- 3.2 Undertake rigid evaluation of circumstances attendant prior to approval of deactivated shutdown in accordance with the criteria laid down in the System Operator Procedure Manual;
- 3.3 Submit to the DOE for consideration the Grid Operating and Maintenance Program (GOMP) including any updates and monitor the compliance of the generation companies thereof;
- 3.4 Immediately inform the DOE of any power interruptions or existence of

such threats. The report shall include a description of the, magnitude, duration, causes and the areas affected, as well as the contingency or mitigating measures that were undertaken; and

- 3.5 Ensure the institutionalization of the necessary connection agreements with all the Grid Users (i.e., Generation Companies, DUs and Direct Customers) and impose all the pertinent requirements in the PGC.

**SECTION 4. Responsibilities of Distribution Utilities.** – Distribution utilities shall:

- 4.1 Regularly submit to the DOE the prescribed Distribution Utility Development Plan (DDP) to monitor the existing, available, and future supply requirements and the PDUs Monthly Operations Report (MOR) and Monthly Financial and Statistical Report (MFSR) for ECs;
- 4.2 Comply with all the requirements of the PGC and Philippine Distribution Code (PDC) at all times and report significant load interruptions in its franchise area or any threats that may lead such events;
- 4.3 Ensure that the power requirements within their franchise areas are adequately covered by supply contracts or spot purchases from the WESM at all times; and
- 4.4 In cases of Red Alert status as declared by the System Operator, immediately submit to the DOE its manual load dropping schedule.

**SECTION 5. Lead Agency.** – The DOE, being the agency tasked to supervise and oversee the electric power industry, shall be the lead agency in ensuring that all plans and programs to achieve the objectives of this Circular are properly carried out.

**SECTION 6. Monitoring, Enforcement and Compliance.** – The DOE, through EPIMB, shall monitor the compliance of all Generation Companies, all Distribution Utilities and the NGCP. The DOE, in consultation with the ERC, shall formulate and implement enforcement and penalty mechanism in cases of non-compliance to this Circular by the Generation Companies, Distribution Utilities and the NGCP.

For the purpose of monitoring and assessing the overall reliability performance of the Grid and the Grid User facilities, a Grid Reliability Task Force to undertake the necessary studies and policy recommendations to the DOE and ERC shall be created which members and specific task shall be defined in a separate Circular.

**SECTION 7. Regulatory Support.** – The ERC shall ensure the timely recovery of generation cost of the power plants in accordance with existing laws and procedures.

**SECTION 8. Linkage with Other Government Entities.** – The DOE may seek assistance from other government agencies such as Bureau of Customs and National Water Resources Board in the monitoring of the fuel inventory and supply of water resources for power use.

**SECTION 9. Effectivity.** – This Circular shall take effect immediately fifteen (15) days from its publication in a newspaper of general circulation.

Signed this 26th day February of 2010 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

## DEPARTMENT CIRCULAR NO. 2004-05-005

### STREAMLINING AND RATIONALIZING THE GRANT OF SUBSIDIES IN THE ELECTRIFICATION OF MISSIONARY AREAS USING SOLAR PHOTOVOLTAIC SYSTEMS

---

**WHEREAS**, Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” declares that it is the policy of the State to ensure and accelerate the total electrification of the country as well as to ensure the quality, reliability, security and affordability of the supply of electric power;

**WHEREAS**, the Department of Energy (“DOE”), in pursuance of the above policies of the State has targeted the attainment of 100 percent barangay electrification level by 2006 and energization of 90 percent of total potential households by 2017;

**WHEREAS**, Rule 13 of the Implementing Rules and Regulations of EPIRA or “EPIRA-IRR” mandates the DOE to formulate a

Missionary Electrification Development Plan (MEDP) which shall include a program for the provision of capital investment and operations regarding capacity additions in existing missionary areas and the facilities to be provided in other areas not connected to the transmission system;

**WHEREAS**, the same rule directs the DOE to issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties including distribution utilities and qualified third parties (“QTPs”) can participate in the missionary electrification projects set forth in the MEDP;

**WHEREAS**, to achieve the formidable task of providing electricity to unenergized areas, the DOE in partnership with other government



agencies and industry stakeholders, has committed to implement the MEDP in a holistic and sustainable manner, which includes among others, rationalization of tariff and subsidy policy, opening up areas that cannot be served by the distribution utilities to alternative electric service providers such as QTPs;

**WHEREAS**, the Government, despite its limited public resources, is currently providing various forms of subsidies to rural electrification projects and other energy intensive activities;

**WHEREAS**, the DOE considers Solar Photovoltaic ("PV") to be cost-effective and environment-friendly technology in providing electricity service and other community services to sparsely populated, remote, unserved and dispersed areas;

**WHEREAS**, there are various projects that are currently implementing solar Photovoltaic (PV) systems to provide electricity services to sparsely populated, remote, unserved, and dispersed markets that do not give due consideration to economic efficiency, financial prudence, and institutional capacity;

**WHEREAS**, to ensure the effective implementation of the solar PV projects in an integrated and sustainable manner, there is an imperative need to rationalize the grant of subsidies to missionary electrification projects using PV systems;

**NOW, THEREFORE**, the DOE hereby adopts and promulgates the following policies on the grant of subsidies to missionary electrification projects using PV systems.

### **SECTION 1. Scope of Coverage. –**

This Circular shall apply to DOE, NEA, SPUG, and other government agencies as well as donor entities providing solar PV subsidies in unenergized, remote, dispersed and unviable areas suitable for solar PV systems.

### **SECTION 2. Definition of Terms. –**

For the purposes of this Circular, the term:

- (a) **"Consumers"** refers to any of the following types of consumers:
  - (1) Single household or establishment availing of a solar home system;
  - (2) Community groups and public institutions availing of Solar PV systems such as solar battery charging station and PV street-lights for community lighting, health clinics, schools, water supply and other community services;
- (b) **"Donor Entities"** refers to any of the following:
  - (1) Multilateral and bilateral agencies such as World Bank, USAID, UNDP, ADB, JICA, foreign governments and other similar agencies providing assistance to the government or directly to the consumers;
  - (2) Private and civic groups engaged in rural and community development;
- (c) **"Missionary Electrification"** refers to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viable levels;
- (d) **"Missionary Electrification Development Program (MEDP)"** refers to the five (5)-year plan of the DOE, updated annually, to implement missionary electrification projects funded through the share of Missionary Electrification in the Universal Charge (ME-UC). The MEDP serves as the country's blueprint for electrification and one of the basis for the determination by the ERC of the ME-UC;
- (e) **"Qualified Third Party" or "QTP"** refers to the alternative electric service provider

authorized to serve remote and unviable areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR;

- (f) **“Solar Battery Charging Station”** refers to a solar PV system consisting of several PV modules that provides battery charging services to a group of consumers or community for generation of electricity;
- (g) **“Solar Home System”** refers to a scheme of solar PV system consisting of one or more PV modules that provides electricity services to a single household or establishment;
- (h) **“Solar Photovoltaic System”** or **“Solar PV System”** refers to a system that uses a semi-conductor device called photovoltaic modules to convert solar energy directly into electrical energy, which include among others solar battery charging station, solar home system and other similar solar PV applications;
- (i) **“Solar PV Dealer”** refers to a Person engaged in direct dealership business which sells PV equipment to households in unenergized and remote rural areas;
- (j) **“Solar PV Service Provider”** refers to a variant of Qualified Third Party engaged in fee-for-service business that installs solar PV systems and, in turn, collects fees for services to consumers in unenergized or remote rural areas;
- (k) **“Solar PV Subsidy”** refers to the direct or indirect assistance provided by the government and/or donor entities for reducing the cost of providing electricity services and other community services using solar PV systems in unenergized remote, dispersed and unviable areas suitable for solar PV systems.

### **SECTION 3. Sources of Solar PV Subsidy. –**

The solar PV subsidy shall be funded from, but not limited to, the following:

- (a) Missionary Electrification Component of the Universal Charge (ME-UC);
- (b) Budgetary allocations of DOE, NEA, SPUG and other energy related government agencies appropriated for rural electrification such as but not limited to grants and aids received from other agencies of the government, private sector or international institutions and internally-generated funds;
- (c) DOE administered funds appropriated for rural electrification; and
- (d) Funds from donor entities.

### **SECTION 4. Beneficiaries of the Solar PV Subsidy. –**

Consumers within an unenergized, remote, dispersed and unviable area, suitable for solar PV systems shall be eligible beneficiaries of the solar PV subsidy; provided that priority shall be given to consumers in areas identified in the MEDP, and/or unenergized areas that have potential market for solar PV systems.

### **SECTION 5. Guiding Policies and Strategies on Solar PV Subsidy. –**

- (a) The utilization of solar PV systems shall be on a least-cost approach and shall be consistent with the overall government program for missionary electrification as formulated and defined in the MEDP.
- (b) The solar PV subsidy shall be made available in a rational, transparent, predictable and technology-neutral manner in order to make solar PV systems more affordable to the poor consumers.
- (c) The amount of solar PV subsidy sourced from government shall be determined by the DOE in consultation with other energy related government agencies, donor entities as well as solar PV dealers and service providers. The determination of solar PV subsidy shall take into account

the following:

- (1) Electricity consumption of consumers;
  - (2) Size/capacity and number of installations of solar PV systems;
  - (3) Cost of solar PV systems;
  - (4) Consumer's willingness to pay;
  - (5) Potential contribution of the household electrification to the community development;
  - (6) Innovative delivery mechanisms of solar PV systems such as but not limited to direct dealership and fee-for-service schemes; and
  - (7) Cost of developing and marketing solar PV systems.
- (d) The scheme of delivering the solar PV subsidy sourced from the government shall likewise be designed by the DOE. The DOE shall endeavor to implement an output-based approach (i.e., the provision of subsidy based on specific accomplishments/performance for a specific period of time) in the use of all available government funds allocated for solar PV subsidy.
- (e) The DOE shall optimize the use of the solar PV subsidy sourced from the government through appropriate schemes such as joint undertakings with donor entities and/or with private capital from solar PV dealers and service providers.
- (f) To ensure consistency with the MEDP and optimized use of solar PV subsidies, all donor entities that shall provide direct or indirect assistance in the provision of electricity and other community services using solar PV systems shall be enjoined to coordinate all plans and programs

with the DOE from its inception. To this end, the DOE shall coordinate with NEDA and concerned government agencies the implementation of all new projects related to the use of solar PV systems.

- (g) The entry of solar PV dealers and service providers shall be encouraged to develop and market solar PV systems in unenergized, remote, dispersed and unviable area. The DOE shall issue accreditation guidelines for solar PV dealers and service providers.
- (h) The DOE shall establish and issue business/operating guidelines for all accredited solar PV dealers/service providers in a manner that shall foster market competition for solar PV systems, promote commercially available products and services using solar PV systems in unenergized and remote rural areas and ensure that solar PV subsidy is passed on to consumers in the form of a lower price.

#### **SECTION 6. Administration of Solar PV Subsidy. –**

- (a) The DOE shall have the overall responsibility in the implementation of the solar PV subsidy program, which shall include, among others, the following:
- (1) Formulation of the overall framework and clearinghouse for all initiatives related to solar PV system electrification;
  - (2) Setting of technical and performance standards for all solar PV Systems;
  - (3) Accreditation of solar PV systems dealers/service providers;
  - (4) Establishment and oversight of solar PV dealers/service providers network;

- (5) Identification and specifying the source of solar PV subsidy which shall be based on the amount of subsidy required to implement solar PV systems projects, extent of installation of solar PV systems, specific programs of donor entities, etc.;
  - (6) Establishment of a computerized database/information system to track and monitor the recipients of subsidies for use of solar PV systems;
  - (7) Coordination with various government agencies implementing solar PV systems projects; and,
  - (8) Project monitoring, evaluation and impact analysis of solar PV subsidy.
- (b) The DOE, in consultation with other concerned government agencies, donor entities and the solar PV industry, shall formulate implementing guidelines for the administration of solar PV subsidies within one (1) month from the effectivity of the Circular.

The implementing guidelines shall contain the following, among others:

- (1) Methodology for the determination of solar PV subsidy for various types of consumers, applications and sources of subsidy;
  - (2) Procedure of availing solar PV subsidies; and
  - (3) Accreditation procedures for solar PV dealers and service providers.
- (c) The DOE, in partnership with the solar PV industry and donor entities shall embark an information campaign to hasten the market acceptability of the solar PV systems within two (2) years upon the effectivity of this Circular. The said information campaign shall be directed

to prospective solar PV systems dealers/providers and targeted consumers.

- (d) A Unified Electrification Subsidy Committee is hereby established to operate under the Expanded Rural Electrification (ER) Program Team, created pursuant to Department Circular No. 2003-04-004 issued on April 01, 2003. The DOE shall chair the said Committee which shall have the following functions and responsibilities:
- (1) Identify all rural electrification projects including solar PV systems installations for inclusion in the MEDP; and,
  - (2) Formulate, recommend and regularly update appropriate guidelines for the provision of subsidy to rural electrification projects including those using solar PV systems.

#### **SECTION 7. *Separability.* –**

If for any reason, any section of this Circular is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

#### **SECTION 8. *Repealing Clause.* –**

All rules, guidelines and issuances or parts thereof which are inconsistent with this Circular are hereby repealed or modified accordingly.

#### **SECTION 9. *Effectivity.* –**

This Circular shall take effect one (1) week following its publication in a newspaper of general circulation.

**VINCENT S. PÉREZ, JR.**  
**Secretary**

Fort Bonifacio, Taguig, Metro Manila,  
28 May 2004.



# Chapter IV

## National Power Corporation

### COMMONWEALTH ACT NO. 120

AN ACT CREATING THE "NATIONAL POWER CORPORATION," PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR, AND RESERVING THE UNAPPROPRIATED PUBLIC WATERS FOR ITS USE

---

**SECTION 1.** For the purpose of undertaking the development of hydraulic power and the production of power from other sources and for other purposes specified in this Act, there is hereby created a public corporation which shall be known as the "National Power Corporation." The words "Corporation" and "Board" appearing in this Act shall respectively refer to the National Power Corporation and the National Power Board, hereinafter provided.

**SECTION 2.** The powers, functions, rights and activities of the said corporation shall be the following:

- (a) To have continuous succession under its corporate name until otherwise provided by law;
- (b) To prescribe its by-laws;
- (c) To adopt and use a seal and alter it at its pleasure;
- (d) To sue and be sued in any court;
- (e) To conduct investigations and surveys for the development of water power in any part of the Philippines;
- (f) To take water from any public stream, river, creek, lake spring or waterfall in the Philippines, for the purposes specified in

this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of due compensation therefore; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof;

- (g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate and improve gas, oil, or steam engines, and/or other prime movers, generators and other machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the use of the Government and the general public; to sell electric power and to fix the rates and provide for the collection of the charges for any service

rendered: *Provided*, That the rates of charges shall not be subject to revision by the Public Service Commission;

- (h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of anything incident to, or necessary, convenient or proper to carry out the purposes for which the corporation was created;
- (i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require: *Provided*, That said works be constructed in such a manner as not to endanger life or property: *And provided, further*, That the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as may be to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way is crossed or intersected by said works shall not obstruct any such crossings or intersections and shall grant the Board or its representative, the proper authority for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct and maintain such works over and throughout the lands owned by the Commonwealth of the Philippines or any of its branches and political subdivisions. The Corporation or its representative may also enter upon private property in the lawful performance or prosecution of its business and purposes: *Provided*, That the owner of such private property shall be indemnified for any actual damage caused thereby;
- (j) To exercise the right of eminent domain for the purposes of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial, and municipal governments;

- (k) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its business or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds subject to the approval of the President of the Philippines upon the recommendation of the Secretary of Finance. The bonded indebtedness of the Corporation, of all classes, shall not at any time exceed twenty million pesos and the issue thereof shall be subject to the conditions set forth in section four of this Act; and
- (l) To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purposes.

**SECTION 3.** All corporate powers of the National Power Corporation shall be vested in a board to be known as the National Power Board, composed of five members who shall all be appointed by the President of the Philippines with the consent of the Commission of Appointments of the National Assembly. The members of the Board shall hold office for a term of three years.

The Board shall immediately organized by electing a chairman from among its members and by adopting its rules of procedure and fixing the time and place for holding regular meetings.

The members of said Board who are not in the employ of the Government of the Commonwealth of the Philippines shall receive a *per diem* of not to exceed twenty-five pesos for each day of meeting of the Board actually attended by them.

It shall appoint its secretary and fix his salary which shall not exceed four thousand pesos per annum.

The Board shall render reports to the President of the Philippines and the National Assembly as provided in section five hundred and seventy-four to five hundred and seventy-seven, inclusive, of act Numbered Twenty-seven hundred and eleven.

**SECTION 4.** Whenever the Board may deem it necessary for the Corporation to incur an indebtedness or to issue bonds to carry out the purposes for which the Corporation has been organized, it shall, by resolution, so declare and state the purpose for which the proposed debt is to be incurred and the conditions of the bonds. In order that such resolution be valid, it shall be passed by the affirmative vote of at least three members of the Board and approved by the President of the Philippines upon the recommendation of the Secretary of Finance.

The bonds shall be issued under the following conditions: (a) they shall be in registered form and transferable at the Office of the Treasurer of the Philippines in Manila or at the Registry Office of the Department of the Treasury of the United States at Washington, District of Columbia; (b) they shall not be sold at less than par; (c) they shall be payable thirty years after the date of issue but may be redeemable at the pleasure of the Board, after ten years from the date of issue; (d) they shall bear interest at an annual rate to be determined before their issuance by the Secretary of Finance; (e) the interest may be determined by the Secretary of Finance before the issuance of the bonds; and (f) both principal and interest shall be payable in gold coin or its equivalent, in the discretion of the Secretary of Finance, in Manila, if the bonds are sold in the Philippines or in the United States Treasury if they are sold in the United States.

The bonds issued under the authority of this Act shall be exempt from the payment of all taxes by the Commonwealth of the Philippines, or by any authority, branch, division or political subdivision thereof and

subject to the provisions of the Act of Congress, approved March 24, 1934, otherwise known as the *Tydings-McDuffie Law*, which facts shall be stated upon the face of said bonds. Said bonds shall be receivable as security in any transaction with the Government in which such security is required.

A sinking funds shall be created, the total whereof at each annual due date of the bonds shall be equal to the total of an annuity of nineteen thousand three hundred seventy-one pesos and thirty-three centavos for each one million pesos of bonds outstanding, with interest at the rate of three and one-half per centum per annum. The sinking funds shall be under the custody of the Treasurer of the Philippines, who shall invest the same subject to the approval of the Board and the Secretary of Finance.

The Commonwealth of the Philippines hereby guarantees the payment of the National Power Corporation of both the principal and the interest of the bonds issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the National Power Corporation fails to do so, and there are hereby appropriated, out of the general funds in the Philippine Treasury not otherwise appropriated, the sums necessary to make the payments guaranteed by this Act: *Provided*, That the sums so paid by the Commonwealth of the Philippines shall be refunded by the National Power Corporation.

**SECTION 5.** The affairs and current business of the Corporation shall be conducted, and its rights and property shall be kept and preserved, under the direction of the National Power Board, by the Manager, Assistant Manager, Treasurer and such additional officers and employees as the said Board may provide. The Auditor General shall be *ex-officio* Auditor of the Corporation.

The duties and powers as well as the compensation of the said officers and employees shall be such as may be defined



and prescribed or fixed by the National Power Board: *Provided*, That no additional compensation shall be given to any officer or employee of the Commonwealth or any of its political subdivisions or of any public or semi-public corporation, who may be designated to perform additional duties in the Corporation.

The Manager, Assistant Manager and Treasurer shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments of the National Assembly.

**SECTION 6.** Upon determination by the Manager that the construction of any waterpower project by the Corporation is advisable, he shall submit a report on the engineering and economic feasibility of the project together with preliminary plans and estimates of the cost of the proposed development and the estimated income to be derived there from.

The National Power Board may thereupon at its discretion, designate a consulting board composed of two competent and impartial engineers and one competent economist to pass upon the different aspects, of the project and comment on the report of the Manager. The Board shall, with the said report and comment in view, decide whether or not the project shall be constructed, and what changes if any shall be made in the scheme proposed by the Manager. The decision of the Board shall be final.

**SECTION 7.** All work of construction or repair of the Corporation involving an estimated cost of three thousand pesos or more shall be let by the Manager, with the approval of the National Power Board, to the responsible bidder who made the lowest and most advantageous bid. Notice to bidders shall be published in the *Official Gazette* as provided by law. In case no satisfactory bid is received, the Manager may proceed to advertise anew, or with the approval of the Board, proceed to do the work by administration. Before award of contract is made, the Manager shall

require the contractor to give an adequate bond to secure the proper accomplishment of the work under contract and to satisfy all obligations for materials used and labor employed upon the same: *Provided*, That any repair, reconstruction or other work of an emergency nature may be authorized by the Board to be undertaken by administration or by contract.

**SECTION 8.** Any person or persons who shall willfully or maliciously destroy, injure or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipe, culvert, post, abutment, conductor, cable-wire, insulator, weir, benchmark, monument, or other work, appliance, machinery, building or property of the Corporation, or who shall willfully or maliciously do any act which shall injuriously affect the quantity of the water or electrical energy of the Corporation or the supply, transmission, measurement or regulation thereof, or who shall maliciously interfere with any person engaged in the discharge of duties connected therewith, shall be guilty of a felony and punished with a fine not to exceed five thousand pesos or with imprisonment for a term not to exceed two years, or both such fine and imprisonment, at the discretion of the court, and any injured party shall have the right to recover all damages suffered and cost of suit in a separate civil action in any court of competent jurisdiction.

**SECTION 9.** Subject to all existing rights, all unappropriated public waters which may be used and developed for waterpower purposes shall be, and hereby are, reserved from appropriation by any person, firm or corporation under any general or special law relating to the appropriation of public waters, for the use of the National Power Corporation created by this Act: *Provided, however*, That the President, upon the recommendation of the Secretary of Public Works and Communications, concurred in by the National Power Board, may, from time to time, release from this reservation any

unappropriated public waters which may not be necessary for the use of the National Power Corporation.

**SECTION 10.** At any time that the Board certifies that the Corporation is able to furnish electric power for lighting and other purposes to any office, shop, or establishment operated and/or owned or controlled by the National Government or by any city, province, municipality or other political subdivision of the Commonwealth of the Philippines, the National Government and the government of said city, province, municipality or other political subdivision shall be compelled to secure from the Corporation as soon as practicable such electric power as it may need for lighting and the operation of its offices, shops or establishments or for any work undertaken by it.

The provisions of this section shall also apply to firms or business owned or controlled by the National Government or by the government of any city, province, municipality or other political subdivision.

**SECTION 11.** There is hereby appropriated, out of any funds in the Philippine Treasury not otherwise appropriated, the sum of two hundred and fifty thousand pesos, for the purpose of organizing the Corporation and conducting the preliminary work: *Provided*, That the said amount shall be reimbursed to the Philippine Treasury upon the certification of the Auditor General that the Corporation is in a financial condition to do so, and by virtue of such certification, the National Power Board shall approve a resolution authorizing the Treasury of the Corporation to make the necessary payment.

As soon as the construction of any project is decided upon, the Corporation may issue bonds for financing the project in accordance with the provisions of section four of this Act.

**SECTION 12.** This Act shall take effect upon its approval.

Approved, November 3, 1936

## REPUBLIC ACT NO. 6395

### AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION

---

**SECTION 1. The Charter of the National Power Corporation is hereby revised, and shall henceforth read as follows:**

“SECTION 1. *Declaration of Policy.* – Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the

nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions.

“SEC. 2. *The National Power Corporation; Its Corporate Life; ‘Corporation’ and ‘Board’ Defined.* – To carry out the above-stated policy, specifically to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis, the public corporation

created under Commonwealth Act Numbered One hundred twenty and known as the 'National Power Corporation' shall continue to exist for fifty years from and after the expiration of its present corporate existence.

"In the pursuit of its objectives, the Corporation shall, so far as feasible, spread the benefits of its projects and operations to the greatest number of the population possible, and the Corporation shall prosecute faithfully such projects as will promote the total electrification of Luzon Islands, Visayan Islands and the Mindanao Islands.

"The words 'Corporation' and 'Board' appearing in this Act shall respectively refer to the National Power Corporation and the National Power Board.

"SEC. 3. *Powers and General Functions of the Corporation.* – The powers, functions, rights and activities of the Corporation shall be the following:

"(a) To have continuous succession under its corporate name until otherwise provided by law;

"(b) To prescribe its by-laws not inconsistent with this Act;

"(c) To adopt and use a seal and alter it at its pleasure;

"(d) To sue and be sued in any court;

"(e) To conduct investigations and surveys for the development of water power in any part of the Philippines;

"(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or

may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: *Provided*, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby;

"(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from an| river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate, and improve gas, oil, or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting systems for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions: *Provided*, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts, when in the judgment of the Public Service Commission the franchise holder is not in a position

or fails or refuses to adequately supply such power requirement, unless the franchise holder consents thereto: *Provided, further,* That the Corporation shall continue to sell electricity to industrial enterprises under existing contracts; and provide for the collection of the charges for any service rendered;

“(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created: *Provided,* That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: *Provided, however,* That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property;

“(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require: *Provided,* That said works be constructed in such a manner as not to endanger life or property: *And provided, further,* That the stream, watercourse, canal ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right of way or property is lawfully crossed or intersected by said works shall not obstruct any such crossings or intersection and shall grant the Board or its representative, the proper authority for the execution of such work. The

Corporation is hereby given the right of way to locate, construct and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representative may also enter upon private property in the lawful performance or prosecution of its business and purposes, including the construction of the transmission lines thereon: *Provided,* That the owner of such private property shall be indemnified for any actual damage caused thereby: *Provided, further,* That said action for damages is filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established: *Provided, finally,* That after the said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities;

“(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments;

“(k) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its business or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds subject to approval of the President upon recommendation of the Secretary of Finance;

“(l) To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which,

from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purpose;

“(m) To cooperate with, and to coordinate its operations with those of the National Electrification Administration and public service entities;

“(n) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation. Upon determination by the Corporation of the areas required for watersheds for a specific project; the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

“(o) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution and promote the conservation, development and maximum utilization of natural resources; and

“(p) Generally, to exercise all the powers of a corporation under the *Corporation Law* insofar as they are not inconsistent with the provisions of this Act.

“SECTION 4. *Fixing of Rates by the Board and Review by the Public Service Commission.*  
– The Board shall fix the rates and fees to be charged by the Corporation so that the

Corporation’s rate of return shall be not more than ten per centum (10%) on a rate base composed of the sum of its net assets in operation as revalued from time to time plus two months’ operating capital: *Provided*, That in determining the rate of return, interest on loans, bonds and other debts shall not be included as expenses. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation. The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates or fees, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards herein outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.

“In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

“The decision of the Public Service Commission shall be appealable to the Supreme Court in accordance with the provisions of the Rules of Court.

“The Corporation shall charge in any interconnected system a uniform schedule of rates for all its customers that fall within the same classification.

“The rates to be charged in any interconnected system in Luzon, Visayas, and Mindanao, respectively, shall be determined independently from each other, and expenses

or fixed investments in any one region shall not be utilized for purposes of fixing the rates to be charged in another region, but shall be determined in the light of conditions and circumstances obtaining in each region.

*“SECTION 5. Capital Stock of the Corporation.*

– The authorized capital stock of the Corporation is three hundred million pesos divided into three million shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation. The said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four thousand eight hundred ninety-seven.

*“SECTION 6. The National Power Board; Its Composition; Compensation of Members; Qualifications; Powers and Duties.*

– The corporate powers of the Corporation shall be vested in and exercised by the Board composed of seven members consisting of a chairman, vice-chairman and five directors who, with the exception of the vice-chairman, shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments.

“In the appointment of said members, the President of the Philippines shall appoint one to represent Luzon, one to represent the Visayas, one to represent Mindanao, one to represent labor, and one to represent the business sector. The labor representative shall be chosen from at least live recommendees of the employees’ recognized bargaining units in the Corporation.

“The General Manager shall be the ex-officio Vice-Chairman of the Board.

“The said members of the Board shall serve for terms of three years, except that any person appointed to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

“Every member of the Board shall possess any one or combination of the following qualifications: A duly licensed professional of recognized competence in engineering, in business management and finance, or in law, particularly in the field of corporate practice, with at least ten years actual and distinguished experience in their respective fields of expertise, or a recognized labor, leader with sufficient training, particularly in labor-management relations, and of good moral character. The regional representatives appointed by the President of the Philippines shall be residents of the regions they represent.

“The members of said Board shall receive a *per diem*, of not to exceed three hundred pesos for each regular meeting of the Board and one hundred pesos for each special meeting actually attended by them: *Provided*, That such per diems shall not exceed one thousand five hundred pesos during any month for each member: *And, provided, further*, That no other allowances or any form of compensation shall be paid them, except actual expenses in travelling to and from their residences to attend Board meetings.

“A majority of the members of the Board shall constitute a quorum for the transaction of the business of the Board.

“The Board shall, moreover, have the following specific powers and duties:

“(a) To formulate and adopt policies and measures for the management and operation of the Corporation;

“(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of not more than ten thousand pesos each to municipalities which are the site of or contiguous to watersheds, lakes or natural sources

of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of Economic Coordination: *Provided*, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the Committee on National Enterprises and Government Corporations of the Senate and the Committee on Government Enterprises of the House of Representatives within fifteen (15) days from the transmission thereof to the Office of Economic Coordination;

“(c) Subject to the provisions of existing laws and regulations and upon the recommendation of the general Manager, to organize, reorganize and determine the Corporation’s staffing pattern and the number of personnel, to fix their salaries and to define their powers and duties;

“(d) To appoint and fix the compensation of the General Manager, subject to the approval of the President of the Philippines, and to appoint and fix the compensation of the Assistant General Manager, regional managers, and department chiefs with the approval of the Administrator of Economic Coordination;

“(e) For cause, to suspend, or remove, by a majority vote of all members, the General Manager, with the approval of the President of the Philippines, and the Assistant General Manager, regional managers and department chiefs, with the approval of the Office of Economic Coordination; and

“(f) To adopt and set down guidelines for the employment of personnel on the basis of merit, technical competence and moral character.

“SECTION 7. *The General Manager; His Powers and Duties; Regional Managers and Other Officers and Employees of the Corporation.*

– The management of the Corporation shall be vested in the General Manager, assisted by the Assistant General Manager and three regional managers respectively for operations in Luzon, Visayas and Mindanao, a department chief for finance, a department chief for engineering and construction, a department chief for administration, and such additional officers and employees as the said Board may provide. For this purpose, the General Manager shall have the following powers and duties:

“(a) To execute and administer the policies and measures approved by the Board, and have the responsibility for the efficient discharge of management functions;

“(b) To submit for the consideration of the Board such other policies and measures which he deems necessary to carry out the purposes and provisions of this Act;

“(c) To direct and supervise the operation and internal administration of the Corporation and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the Corporation;

“(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the Corporation; and, for cause, to remove, suspend or otherwise discipline, any subordinate employee with the approval of the Board;

“(e) To prepare an annual report on the activities of the Corporation at the close of each fiscal year and submit

a copy thereof to the President of the Philippines, President of the Senate, and Speaker of the House of Representatives and to the chairman of the committee concerned in the Senate and in the House of Representatives: *Provided*, That the Corporation shall similarly submit to the respective chairman of the said committees of Congress a report of its operations and financial statements within fifteen (15) days from the end of every quarter: *And provided, further*, That said committees, either *motu proprio* or upon the request of any of their members, or of any Member of Congress, as the case may be, shall have the authority to look into all the matters relative to the financial and business operations and expenditures of the Corporation;

“(f) To exercise such other powers and duties as may be vested in him by the Board from time to time. In the case of absence or disability of the General Manager, the Assistant General Manager shall act in his place.

“Under the supervision and control of the General Manager, the regional managers shall take charge of the operations of the Corporation as well as its power development program within their respective regions, and, subject to such conditions as the Board may prescribe upon recommendation of the General Manager, shall have as much autonomy as shall ensure the efficient conduct of the Corporation’s affairs.

“The Auditor General shall be ex-officio Auditor of the Corporation. The provisions of Section five hundred eighty-four of the *Revised Administrative Code*, as amended by Section one of Republic Act Numbered Twenty-two hundred sixty-six, shall apply to the office of the representative of the Auditor General in the Corporation.

“SECTION 8. *Authority to Incur Indebtedness and Issue Bonds; Their Conditions, Privileges and Exemptions, Sinking Funds; Guarantee.* –

“(a) *Domestic Indebtedness.* – Whenever the Board deems it necessary for the Corporation to incur indebtedness or to issue bonds to carry out the purpose for which the Corporation has been organized, it shall, by resolution, declare and state the purpose for which the proposed debt is to be incurred and the conditions of the bonds. In order that such resolution be valid, it shall be passed by the affirmative vote of at least four members of the Board and approved by the President of the Philippines upon recommendation of the Secretary of Finance.

“The bonds shall be issued under the following conditions: (1) they shall be in registered form and transferable at the Office of the Treasurer of the Philippines; (2) they shall not be sold at less than par; (3) they shall be payable ten years or more from date of issue as may be determined by the Secretary of Finance before their issuance but may be redeemable, at the pleasure of the Board, after five years from such date of issue; (4) they shall bear interest at an annual rate to be determined before their issuance by the Secretary of Finance; (5) the interest may be payable quarterly, semi-annually or annually as may be determined by the Secretary of Finance before the issuance of the bonds; and (6) both principal and interest shall be payable in legal tender of the Philippines.

“The bonds issued under the authority of this subsection shall be exempt from the payment of all taxes by the Republic of the Philippines, or



by any authority, branch, division or political subdivision thereof which facts shall be stated upon the face of said bonds. Said bonds shall be receivable as security in any transaction with the Government in which such security is required.

“A sinking fund shall be created, the total thereof at each annual due date of the bonds shall be equal to an amount of annuity earning an annual interest of nine-tenths of the rate of interest of the bonds as fixed by the Secretary of Finance. The sinking fund shall be under the custody of the Treasurer of the Philippines, who shall invest the same subject to the approval of the Board and the Secretary of Finance.

‘The Republic of the Philippines hereby guarantees the payment by the Corporation of both the principal and the interest of the bonds issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the Corporation fails to do so, and there are hereby appropriated, out of the general funds in the National Treasury not otherwise appropriated, the sums necessary to make the payments guaranteed by this Act: *Provided*, That the sums so paid by the Republic of the Philippines shall be refunded by the Corporation: *Provided, further*, That the Corporation shall set aside five per centum of its annual net operating revenues before interests as a reserve or sinking fund to answer for amounts advanced to it by the National Government for any loan, credit and indebtedness contracted by the former for which the latter shall be held answerable as primary obligor or guarantor under the provisions of this Act: *Provided, furthermore*, That the setting aside

of the amounts mentioned herein shall automatically cease the moment the accumulated sinking fund or reserve exceeds the amounts advanced to the Corporation by the National Government under this Act: And, *provided, finally*, That the Corporation may periodically make partial payments to the National Government out of the said reserves.

“The total principal indebtedness of the Corporation under this subsection, exclusive of interest, shall not at any time exceed five hundred million pesos.

“(b) *Foreign Loans*. – The Corporation is hereby authorized to contract loans, credits, any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources the total outstanding amount of which, exclusive of interests, shall not exceed two hundred million United States dollars or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

“The President of the Philippines, by himself, or through the Secretary of Finance or the Governor of the Central Bank, is hereby authorized to negotiate and contract with foreign governments or any international financial institutions, in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development, of the economy of the country.

“The President of the Philippines, by himself, or through the Secretary of Finance or the Governor of the Central Bank, is hereby further authorized to guarantee, absolutely and unconditionally, as primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loan or loans herein authorized as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions.

“In the negotiation and contracting of any loan, credit or indebtedness under this subsection, the provision of Section four-a of Republic Act Numbered Four thousand eight hundred sixty, as provided in Section five of Republic Act Numbered Six thousand one hundred forty-two, shall apply.

“The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials and supplies by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or any of its agencies and political subdivisions.

“SECTION 9. *Construction of Power Projects Recommended by the General Manager.* – Upon determination by the General Manager, on his own initiative or as recommended by the regional manager concerned, that the

construction of any project by the Corporation is advisable, a report to the Board, on the engineering and economic feasibility of the project together with preliminary plans and estimates of the cost of the proposed development and the estimated income to be derived therefrom shall be submitted by the General Manager.

“The Board may thereupon, at its discretion, designate a consulting board composed of two competent and impartial engineers and one competent economist to pass upon the different aspects of the project and comment on the report of the General Manager. The Board shall, with the said report and comment in view, decide whether or not the project shall be constructed, and what changes, if any, shall be made in the scheme proposed by the General Manager.

“SECTION 10. *Construction or Repair Work Awarded upon Public Bidding; Exceptions.* – All work of construction or repair of the Corporation involving an estimated cost of seventy-five thousand pesos or more shall be let by the General Manager, with the approval of the Board, to the responsible bidder who made the lowest or most advantageous bid. Notice to bidders shall be published as provided by law. In case no satisfactory bid is received, the General Manager may proceed to advertise anew, or with the approval of the Board, do the work by administration. Before award of contract is made, the General Manager shall require the contractor to give an adequate bond to secure the proper accomplishment of the work under contract and to satisfy all obligations for materials used and labor employed upon the same: *Provided*, That any repair, reconstruction or other work of an emergency nature may be authorized by the Board to be undertaken by administration or by contract: *And, provided, further*, That any single work of construction or repair involving an estimated total cost of less than seventy-five thousand pesos may, at the option of the General Manager, be authorized by him to be undertaken by

administration or by “pacquiao” contract after a canvass of the market to determine the lowest or most advantageous price.

“SECTION 11. *Penalty for Destroying, Injuring or Interfering with any project of the Corporation, or maliciously Interfering with any Person in the Discharge of his Duties Connected therewith.* – Any person or persons who shall maliciously destroy, injure, or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipes, culvert, post, abutment, conductor, cable-wire, insulator, weir, benchmark, monument, or other works, appliance, machinery, building or property of the Corporation, or who shall maliciously do any act which shall injuriously affect the quantity or quality of the water or electrical energy of the Corporation or the supply, transmission, measurement, or regulation thereof, or who shall maliciously interfere with any person engaged in the discharge of duties connected therewith, or who shall maliciously prevent, obstruct and interfere with the survey, works and the construction of access road and transmission lines or any related works of the Corporation, shall be guilty of felony and punished with a fine ranging from one to five thousand pesos or with imprisonment ranging from one to five years, or both such fine and imprisonment, at the discretion of the Court, and any injured party shall have the right to recover all damages suffered and cost of suit in a separate civil action in any court of competent jurisdiction.

“SECTION 12. *Appropriation of Public Waters.* – Subject to existing rights, all unappropriated public waters which may be used and developed for hydraulic power purposes shall be granted to the Corporation by the Secretary of Public Works and Communications: *Provided,* That in case of conflict with the needs for domestic water supply, the latter shall prevail.

“SECTION 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities.* – The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

“(a) From the payment of all taxes, duties, fees, impost, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

“(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

“(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

“(d) From all taxes, duties, fees, impost, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

“SECTION 14. *Contract with Franchise Holders, Conditions of.* – The Corporation shall, in any contract for the supply of electric power to a franchise holder, require as a condition that the franchise holder, if it receives at least sixty per cent of its electric power and energy from the Corporation, shall not realize a rate of return of more than twelve per cent annually on a rate base composed of the sum of its net assets in operation revalued from time to time, plus two-month operating capital, subject to the non-impairment-of-obligations-of-contracts provision of the Constitution: *Provided,* That in determining the rate of return, interest on loans, bonds and other debts shall not be included as expenses. It shall likewise be a condition in the contract that the Corporation shall cancel or revoke the contract upon judgment of the Public Service Commission after due hearing and upon a showing by customers of the franchise holder that household electrical appliances, have been damaged resulting from deliberate overloading by, or power deficiency of, the franchise holder. The Corporation shall renew all existing contracts with franchise holders for the supply of electric power and energy in order to give effect to the provisions hereof.

“SECTION 15. *Laws Governing Relations of Corporation with Electric Cooperatives.* – Nothing in this Act, shall, directly or indirectly, alter, modify, or repeal the provisions of Republic Act Numbered Six thousand thirty-eight, particularly in respect of the rights of

electric cooperatives registered under the same Act. In its contracts and relations with such cooperatives, the Corporation shall be governed by the provisions of the said Act and the specific legislative franchise of such cooperatives.

“SECTION 16. *Non-impairment of Collective Bargaining Agreements and Rights of Labor Unions.* – Nothing in this Act shall be “construed to impair existing collective bargaining agreements with the labor unions in the Corporation or the right of employees to organize and bargain collectively or diminish the rights of labor in the Corporation under the Industrial Peace Act or other labor laws.”

“SECTION 17. *Separability Clause.* – The provisions of this Act are hereby declared to be separable, and in the event any one or more of such provisions are held unconstitutional, they shall not affect the validity of other provisions.

“SECTION 18. *Repealing Clause.* – All laws, executive and administrative orders, or parts thereof, inconsistent with any provision of this Act are hereby repealed or modified accordingly.”

**SECTION 2.** *Effective Date.* – This Act shall take effect upon its approval.

Approved, September 10, 1971

## PRESIDENTIAL DECREE NO. 380

AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE, ENTITLED "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION"

---

**WHEREAS**, under Republic Act No. 6395, it has been declared that: (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions;

**WHEREAS**, under Presidential Decree No. 40, dated November 7, 1972, certain basic policies for the attainment of the objectives for the speedy electrification of the country more particularly the rural areas, have been established;

**WHEREAS**, under the basic policies for the electric power industry established under Presidential Decree No. 40, the National Power Corporation (NPC) is also given the responsibility for the setting up of transmission line grids and the construction of associated generation facilities in Luzon, Mindanao, and major islands of the country, including the Visayas and to own and operate as a single integrated system all generating facilities supplying electric power to the entire area embraced by any grid set up by the NPC;

**WHEREAS**, the additional responsibilities and expanded activities of NPC under Presidential Decree No. 40 will more than treble the capital requirements needed for the expansion of generation and transmission facilities, in addition to the funds necessary for the

acquisition of existing generation facilities in areas embraced by grids set up by NPC;

**WHEREAS**, in order to attain expeditiously the declared objective of total electrification of the country and to implement the basic policies established under Presidential Decree No. 40, certain sections of Republic Act Numbered Sixty-Three Hundred Ninety-Five should be amended;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, do hereby amend certain sections or provisions of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, to wit:

SECTION 1. Section 3 (g) of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

"(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate, and improve gas, oil or steam engines, and/or other prime movers, generators

and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions; *Provided*, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts, when in the judgment of the Board of Power and Waterworks the cooperative supplying electric power or franchise holder of the area is not in a position by itself, or fails or refuses to adequately supply such power requirement, unless the electric cooperative or franchise holder consents thereto: *Provided, further*, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments, wherein the cost of power, based on the Corporation's then prevail-tariffs, is more than ten per cent (10%) of the total production cost of the goods or commodities produced; *Provided, finally*, That the Corporation shall continue to sell electricity to industrial enterprises under existing contracts, and provide for the collection of charges for any service rendered;"

SECTION 2. Section 3 (i) of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

"(i) To construct works across, or otherwise, any steam, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require: *Provided*, That said works be constructed in such a manner as not to endanger life or property; and *Provided, further*, That the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right of way or property is lawfully crossed or intersected by said works shall not obstruct any such crossings or intersections and shall grant the Corporation or its representative, the proper authority for the execution of such work. The Corporation is hereby given the right of way to locate, construct, and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of the transmission lines thereon; *Provided*, That the owner of such private property shall be compensated as follows:

"(a) In case only an easement of right of way for a transmission line is required, then only a nominal easement fee shall be paid which shall be in an amount equivalent to not more than ten per cent of the value of the land or portion thereof required for the right of way of the line, based on the tax declaration that is valid and effective at the

time of the filing of the complaint for eminent domain or actual entry into the property by the Corporation, whichever is earlier;

“(b) In case the land shall be acquired by purchase, the fair market value thereof, which shall be the value of the land based on the tax declaration that is valid and effective at the time of the filing of the complaint for eminent domain, or the taking of said land by the Corporation, whichever is earlier; and

“(c) In addition, the owner shall be compensated for the improvements such as houses, buildings, structures, and/or agricultural crops and the like, actually damaged during the construction, operation and maintenance of such works on the land, in amounts based on the value of such improvements appearing on the tax declaration that is valid and effective and/or the prevailing valuation of such agricultural crops and the like made by the appropriate appraisal body authorized by law at the time of filing of the complaint for eminent domain or taking of said improvements by the Corporation, whichever is earlier;

*Provided, further,* That any action for compensation and/or damages under (a), (b), and (c) above, is filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established; *Provided, finally,* That after the said period no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities, nor the amounts of compensation and/or damages involved.”

SECTION 3. Section 3, paragraphs (l), (m)

and (o) of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“(l) To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purpose, including the establishment of subsidiaries;

“(m) To cooperate with, and to coordinate its operations with those of the Power Development Council, the National Electrification Administration and public service entities;

xxx xxx xxx

“(o) In the prosecution and maintenance of its projects and plants, the Corporation shall adopt measures to prevent environmental pollution and enhance the conservation, development and maximum utilization of natural resources, including the improvement and beautification of its reservoirs and other areas to promote tourism and related purposes, and to provide for the necessary corporate funds therefor; and”

SECTION 4. Section 4, fourth paragraph of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“The Corporation shall charge in any interconnected system a uniform schedule of rates for all its customers that fall within the same classification.

Towards this end, the Corporation shall prescribe a standard form of contract and appropriate rules and regulations for the sale of electricity, which shall be uniformly applied and become effective on all power customers after they are duly notified or fifteen days after their publication in newspapers of general circulation. All subsisting power contracts are hereby considered revised to give immediate effectivity to this provisions.”

SECTION 5. Section 5 of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“SEC. 5. *Capital Stock of the Corporation.* – The authorized capital stock of the Corporation is two billion pesos divided into twenty million shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. The sum of three hundred million pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.

“The remaining one billion seven hundred million shall be subscribed by the Government of the Philippines and shall be paid as follows:

“(a) The sum of twenty-nine million two hundred sixty-seven thousand six hundred pesos representing outstanding cost and interest of reparation goods procured by the Corporation pursuant to the provisions of Republic Act

Numbered Seventeen Hundred Eighty-Nine, shall be additional paid-in subscription of the Government of the Philippines for two hundred ninety-two thousand six hundred seventy-six shares of stock of said capital stock;

“(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonded indebtedness, cost of reparations goods that may be allocated to the Corporation in the future, and surpluses of the Corporation, and in the absence thereof, from bond issue upon request of the Corporation for specific projects duly approved from time to time by the President of the Philippines.”

SECTION 6. Section 6, sixth paragraph of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“The members of said Board shall receive a per diem of not to exceed three hundred pesos for each regular meeting of the board and one hundred pesos for each special meeting actually attended by them: *Provided*, That such per diems shall not exceed one thousand five hundred pesos during any month for each member.”

SECTION 7. Section 6, paragraphs (b), (c), (d), and (e) of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of



not more than ten thousand pesos each to municipalities that are contiguous to watersheds, lakes or natural sources which are proven to have suffered material damages due to the harnessing of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of the President; *Provided*, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the National Assembly within fifteen (15) days from the transmission thereof to the Office of the President;

“(c) Subject to the provisions of existing laws and regulations and upon the recommendation of the General Manager, to organize, reorganize in a manner other than what is provided for under this Act and Section 3 of Republic Act No. 4177 and determine the Corporation’s staffing pattern and the number of personnel, to fix their salaries and to define their power and duties subject to approval of higher authorities;

“(d) To appoint and fix the compensation of the General Manager, Assistant General Manager, regional managers and department chiefs subject to the approval of the President of the Philippines;

“(e) For cause to suspend or remove by a majority vote of all members, with the approval of the President of the Philippines, the General Manager, Assistant General Manager, regional managers and department chiefs;”

SECTION 8. Section 8 (a), last paragraph, of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“The total principal indebtedness of the Corporation under this subsection, exclusive of interest, shall not at any time exceed three billion pesos.”

SECTION 9. Section 8 (b) of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“(b) *Foreign Loans.* – The Corporation is hereby authorized to contract loans, credits, any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or funds sources, or to issue bonds, the total outstanding amount of which, exclusive of interests, shall not exceed one billion United States dollars or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

“The President of the Philippines, by himself, or through his duly authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financing institution or fund sources in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development of the economy of the country.

“The President of the Philippines, by himself, or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally, as

primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loans, credits, indebtedness and bonds issued up to the amount herein authorized, which shall be over and above the amount which the President of the Philippines is authorized to guarantee under Republic Act Numbered Sixty-One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

“The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions.”

SECTION 10. Section 13, paragraphs (a) and (d), of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, is hereby amended to read as follows:

“(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions to the Republic of the Philippines, its provinces, cities, municipalities and other government

agencies and instrumentalities, including the taxes, duties, fees, imposts, and other charges provided for under the *Tariff and Customs Code of the Philippines*, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended, and as further amended by Presidential Decree No. 34, dated October 27, 1972, and Presidential Decree No. 69, dated November 24, 1972, and costs and service fees in any court or administrative proceedings in which it may be a party;

xxx xxx xxx

“(d) From all taxes, duties, fees, imposts, and all other charges imposed directly or indirectly by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization and sale of electric power.”

SECTION 11. A new section shall be inserted to be known as Section 15-A of the Charter of the National Power Corporation, Republic Act Numbered Sixty-Three Hundred Ninety-Five, which provides as follows:

“SEC. 15-A. The Corporation shall be under the direct supervision of the Office of the President and all legal matters shall be handled by the Chief Legal Counsel of the Corporation; provided, that the Solicitor General’s Office shall have supervision in the handling of court cases only of the Corporation.

“Considering that the operation of the business of the Corporation affects public convenience and welfare, all industrial disputes in the Corporation shall be settled by the compulsory arbitration.”

SECTION 12. This Decree is hereby made part of the law of the land and provisions of existing laws, executive and administrative orders, or parts thereof, in conflict with this Decree are hereby modified and repealed.

SECTION 13. This Decree shall take effect immediately.

Done in the City of Manila, this 22nd day of January, in the year of Our Lord, nineteen hundred and seventy-four.

### PRESIDENTIAL DECREE NO. 395

FURTHER AMENDING REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE, ENTITLED "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED

---

I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, do hereby further amend Republic Act No. 6395, as amended, particularly Section 1 (g), to read as follows:

"(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate, and improve gas, oil or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the transmission and

utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions; *Provided*, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts; *Provided, further*, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments; *Provided, finally*, That the Corporation shall continue to sell electricity to industrial enterprises under existing contracts, and provide for the collection of charges for any service rendered;"

Done in the City of Manila, this 26th day of February, in the year of Our Lord, nineteen hundred and seventy-four.

## PRESIDENTIAL DECREE NO. 758

### APPROPRIATING FUNDS FOR THE PAYMENT OF THE BALANCE OF THE UNPAID SUBSCRIPTION OF THE GOVERNMENT TO THE CAPITAL STOCK OF THE NATIONAL POWER CORPORATION

---

**WHEREAS**, the present world-wide energy crisis underscores the critical need for the development of local indigenous energy sources: geothermal, coal, hydro and nuclear power;

**WHEREAS**, the National Power Corporation is the primary agency of the Government called upon to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources as well as the transmission of electric power on a nationwide basis;

**WHEREAS**, under Presidential Decree No. 380 amending certain sections of Republic Act No. 6395, entitled "An Act Revising the Charter of the National Power Corporation", the NPC has an authorized capital stock of P2 billion fully subscribed by the Government of which P 818.3 million has been paid and except for the conversion into equity capital of the existing bonded indebtedness, cost of reparations goods that may be allocated to the Corporation in the future, and surpluses of the corporation, and in the absence thereof, from bond issues, there is no appropriation provided for the continuous payment of the balance of the unpaid subscription of the Government to the capital stock of the Corporation;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution do order and decree that:

SECTION 1. Section 5 (b) of the Charter of the National Power Corporation, Presidential Decree Numbered Three Hundred Eighty, is

hereby further amended to read as follows:

"(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonded indebtedness, cost of reparations goods that may be allocated in the future, and surpluses of the corporation, and in the absence thereof, from an annual appropriation of not less than Two Hundred Million Pesos which is hereby made out of any funds in the National Treasury not otherwise appropriated, be they collections from any or all taxes accruing to the General Fund or proceeds from loans, the issuance of bonds, treasury bills or notes which are hereby authorized to be incurred or to be issued by the Secretary of Finance for the purpose, such annual appropriation to be programmed and released by the Budget Commission in accordance with the schedule of cash requirements to be submitted by the Corporation: *Provided*, That this annual appropriation of not less than Two Hundred Million Pesos and the programming and release thereof shall remain in force until the balance of the unpaid subscription of the Government to the capital stock of the Corporation shall have been paid in full."

SECTION 2. This Decree shall take effect immediately.

Done in the City of Manila, this 31st of July in the year of Our Lord, nineteen hundred and seventy-five.

## PRESIDENTIAL DECREE NO. 938

FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION", AS AMENDED BY PRESIDENTIAL DECREES NOS. 380, 395 AND 758

---

**WHEREAS**, in view of the accelerated expansion program for generation and transmission facilities which includes nuclear power generation, the present capitalization of National Power Corporation (NPC) and the ceilings for domestic and foreign borrowings are deemed insufficient;

**WHEREAS**, in the implementation of the power expansion program, NPC is encountering difficulties in the acquisition of land and land rights which unnecessarily stall and delay the prosecution of the works to the prejudice of the projects;

**WHEREAS**, corollary to such right-of-way problems, a definitive declaration of the just compensation for the land and land rights acquired by NPC for its projects should be affected;

**WHEREAS**, in the application of the tax exemption provisions of the Revised Charter, the non-profit character of NPC has not been fully utilized because of restrictive interpretation of the taxing agencies of the government on said provisions;

**WHEREAS**, in view of the changing economic condition obtaining in the country, the ceilings provided for in the award of contracts for construction and furnishing of supplies, materials and equipment have been rendered inadequate;

**WHEREAS**, in order to effect the accelerated expansion program and attain the declared objective of total electrification of the country, further amendments of certain sections of Republic Act No. 6395, as amended by Presidential Decrees Nos. 380, 395 and 758,

have become imperative;

**WHEREAS**, the substantial expansion of the power development program to be implemented by NPC requires revitalization of the organization and flexibility in responding to the dynamic changes in its program;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section 3 (h) of Republic Act No. 6395, as amended, is hereby deleted. The new section shall read as follows:

"(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created."

SECTION 2. Section 3 (i) of the same Act is further amended by deleting paragraphs (a), (b) and (c) thereof. A new section is hereby inserted to read as follows:

"(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway, or railway of private and public ownership as the location of said works may require; *Provided*, That said works be constructed in such a manner as not to endanger life or property; *And, Provided, further*, That the stream, watercourse, canal, ditch, flume, street, avenue, highway

or railway so crossed or intersected be restored as near as possible to their former state or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not abstract any such crossings or intersections and shall grant the Corporation or its representatives, the proper authority for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct, and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of the transmission lines thereon; *Provided*, That the owner of such private property shall be paid the just compensation therefor in accordance with the provisions hereinafter provided; *Provided, further*, That any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, substations, plants or other facilities shall have been established: *Provided, finally*, That after the said period no suit shall be brought to question the said right-of-way, transmission lines, substations, plants or other facilities nor the amounts of compensation and/or damages involved."

SECTION 3. Section 3 (j) of the same Act is hereby amended to read as follows:

"(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by

law for instituting condemnation proceedings by the national, provincial, and municipal government as modified or amended by Presidential Decree No. 42."

SECTION 4. A new section shall be inserted to be known as Section 3A of the same Act to read as follows:

"SEC. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall –

"(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; *Provided*, That in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; *Provided, further*, That such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor.”

SECTION 5. Section 5 of the same Act is hereby amended with the first and second paragraphs thereof to read as follows:

“The authorized capital stock of the Corporation is Eight Billion Pesos (P 8,000,000,000.00) divided into eighty million (P 80,000,000) shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the government of the Philippines in accordance with the

provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety Seven.

The remaining Seven Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:

xxx                      xxx                      xxx

SECTION 6. The first paragraph of Section 7 of the same Act is hereby further amended to read as follows:

“The Management of the Corporation shall be vested in the General Manager, assisted by such number of Assistant General Managers, officials, officers and employees as may be deemed necessary by the Board of Directors of the Corporation to meet the management and technical manpower requirements of its expanding power development projects, which reorganization shall be subject to the approval of the President.”

SECTION 7. Section 8 (a), last paragraph of the same Act is hereby further amended to read as follows:

“The total principal indebtedness of the Corporation under this subsection, exclusive of interests, shall not at any time exceed Twelve Billion Pesos (P 12,000,000,000.00).”

SECTION 8. The first paragraph of Section 8 (b) of the same Act is hereby further amended and a new paragraph shall be inserted between the third and fourth paragraph of said section which shall both read as follows:

“(b) *Foreign Loans.* – The Corporation is hereby authorized to contract loans, credit any convertible

foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources, or to issue bonds, the total outstanding amount of which, exclusive of interests, shall not exceed Four Billion United States Dollars (US \$4,000,000,000.00) or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

xxx                      xxx                      xxx

In the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines, may, when necessary, agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, Republic Act Numbered Five Thousand One Hundred Eighty-Three, insofar as such provisions do not pertain to constructions primarily for national defenses or security purposes; *Provided, however,* That as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged; *Provided, further,* That in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials or supplies of the growth, production or manufacture of the Philippines;

*Provided, finally,* That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

xxx                      xxx                      xxx

SECTION 9. Section 10 of the same Act is hereby amended to read as follows:

*“SEC. 10. Construction, Repair Works, or Contracts for Services and Furnishing of Supplies, Materials and Equipment Awarded Upon Public Bidding: Exceptions. – All works or construction or repair of the Corporation as well as contracts for the services and furnishing of supplies, materials and equipment shall be awarded by the Corporation in accordance with ceilings and rules imposed by the Board; Provided, however,* That these do not conflict with existing Executive Orders and/or presidential issuance on awards of contracts.”

SECTION 10. Section 13 of the same Act is hereby further amended to read as follows:

*“SEC. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. – The Government shall be non-profit and shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, impostes as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.”*



SECTION 11. This Decree is hereby made part of the law of the land, and all provisions of existing laws, executives and administrative orders, or parts thereof in conflict with this Decree are hereby modified and repealed.

SECTION 12. This Decree shall take effect immediately.

Done in the City of Manila, this 27th day of May, in the year of Our Lord, nineteen hundred and seventy-six.

## PRESIDENTIAL DECREE NO. 1360

FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREE NOS. 380, 395, 758 AND 938

**WHEREAS**, the accelerated expansion program of the National Power Corporation involving as it does the construction of generation facilities in Luzon, Visayas and Mindanao and the setting up of transmission line grids require a greater degree of corporate flexibility in the implementation of said power program as well as in corporate management;

**WHEREAS**, in pursuing said accelerated power expansion program for generation and transmission facilities, the present capitalization of P 8 Billion and the ceiling of foreign borrowing pegged at \$ 4 Billion would be rendered insufficient by the year 1987 and, therefore, a corresponding increase thereon is necessary in order that such programs would be successfully completed.

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section 5 of Republic Act Numbered Sixty-Three Hundred Ninety-Five, as amended, is hereby amended with the first and second paragraphs thereof duly revised to read as follows:

*"SEC. 5. Capital Stock of the Corporation. – The authorized capital stock of the Corporation shall be Fifty Billion Pesos (P 50,000,000,000.00) divided into Five Hundred Million (500,000,000) shares having a par value of One Hundred Pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.*

*"The remaining Forty-Nine Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:*

*"(a) The sum of Twenty-Nine Million Two Hundred Sixty-Seven Thousand Six Hundred Pesos representing outstanding cost and interest of reparation goods procured by the Corporation pursuant to the provisions*

of Republic Act Numbered Seventeen Hundred Eighty-Nine, shall be additional paid-in subscription of the Government of the Philippines for Two Hundred Ninety-Two Thousand Six Hundred Seventy-Six shares of stock of said capital stock.

“(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonded indebtedness, cost of reparations goods that may be allocated in the future, and surpluses of the Corporation and in the absence thereof, from an annual appropriation of Two Hundred Million Pesos which is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, be they collections from any or all taxes accruing to the general fund or proceeds from loans, the issuance of bonds, treasury bills or notes which are hereby authorized to be incurred or to be issued by the Secretary of Finance for the purpose, such annual appropriation to be programmed and released by the Budget Commission in accordance with the schedule of cash requirements to be submitted by the Corporation: *Provided*, That this annual appropriation of Two Hundred Million Pesos and the programming and release thereof shall remain in force until the balance of the unpaid subscription of the Government to the capital stock of the Corporation shall have been paid in full.”

SECTION 2. Section 6 of the same Act is hereby amended to read as follows.

“SEC. 6. *The National Power Board; its composition; compensation of members; qualifications; powers and duties.* – The corporate powers of the Corporation shall be vested in and exercised by a Board of seven members consisting of a Chairman, Vice-Chairman and five directors who shall be appointed by the President of the Philippines.

“The President of the Corporation shall be the *ex-officio* Vice-Chairman of the Board.

“The said members of the Board shall serve for terms of three years, except that any person appointed to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

“The Board shall meet as often as may be necessary upon call of the Chairman of the Board or upon call by a majority of all the Board members.

“The members of said Board shall receive a *per diem* of not to exceed Five Hundred Pesos for each regular or special meeting of the Board actually attended by them, and upon approval of the Secretary of Energy, shall receive such other allowances as the Board may prescribe, any provision of law to the contrary notwithstanding.

“A majority of the members of the Board shall constitute a quorum for the transaction of business.

“The Board, shall, moreover, have the following specific powers and duties:

“(a) To formulate and adopt policies and measures for the management and operation of the Corporation;

“(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements;

“(c) To organize, reorganize and determine the Corporation’s organization structure and staffing pattern; abolish and create offices and positions; fix the number of its officers and personnel; transfer and re-assign such officers and personnel; fix their compensation, allowances and benefits, the provisions of Presidential Decree No. 985 to the contrary notwithstanding;

“(d) To fix the compensation of the President of the Corporation who shall be appointed by the President of the Philippines; and to appoint and fix the compensation of other corporate officers;

“(e) For cause, to suspend or remove any corporate officer appointed by the Board;

“(f) To adopt and set down guidelines for the employment of personnel on the basis of merit, technical competence and moral character;

“(g) To take care that in fixing the rates and fees to be charged by the Corporation considerations of adequacy, reliability and sustained power service at the least possible cost to the public and of limited return on investments as prescribed in Section 5 hereof, shall be taken;

“(h) Any provision of law to the contrary notwithstanding, to write off bad debts.”

SECTION 3. Section 7 of the same Act is hereby amended, to read as follows:

*“SEC. 7. The President of the Corporation, his powers and duties; and other Corporate Officers and employees of the Corporation. – The President of the Corporation who shall be the Chief Executive Officer of the Corporation, shall be assisted by such number of Corporate Officers and employees as may be deemed necessary by the Board of Directors of the Corporation.*

“The President of the Corporation shall have the following powers and duties:

“(a) To execute and administer the policies and measures approved by the Board, and have the responsibility for the efficient discharge of management functions;

“(b) To submit for the consideration of the Board such policies and measures which he deems necessary to carry out the purposes and provisions of this Act;

“(c) To direct and supervise the operation and internal administration of the Corporation and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the Corporation;

“(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the Corporation; and for cause, to remove, suspend or otherwise

discipline any subordinate employee of the Corporation;

“(e) To prepare an annual report of the Board on the activities of the Corporation at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

“(f) To represent the Corporation in all dealings and transactions with other offices, agencies and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign;

“(g) To exercise such other powers and duties as may be vested in him by the Board from time to time.

“The Commission on Audit shall appoint a representative who shall be the Auditor of the Corporation. In carrying out his responsibilities, he shall be assisted by such number of personnel as shall be necessary, whose appointments shall be subject to the approval of the Board. The salaries of the Auditor and his staff shall be fixed and approved by the Board.”

SECTION 4. Section 8 of the same Act is hereby amended to read as follows:

“(a) *Domestic Indebtedness.* – Whenever the Board deems it necessary for the Corporation to incur indebtedness by contracting loans with domestic financial institutions or to issue bonds to carry out the purposes for which the Corporation has been organized, it shall, by resolution, approved by at least four

members of the Board, so declare and state the purpose for which the proposed debt is to be incurred and such terms and conditions as it shall deem appropriate for the accomplishment of the said purpose: *Provided*, That in the case of bond issues, the same shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance.

“The bonds issued under the authority of this subsection shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof of which facts shall be stated upon the face of said bonds. Said bonds shall be receivable as security in any transaction with the Government in which such security is required.

“The Republic of the Philippines hereby guarantees the payment by the Corporation of both the principal and the interest of the bonds issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the Corporation fails to do so, and there are hereby appropriated, out of the general funds in the National Treasury not otherwise appropriated, the sums necessary to make the payments guaranteed by this Act: *Provided*, That the sums so paid by the Republic of the Philippines shall be refunded by the Corporation: *Provided*, *further*, That the Corporation shall set aside five per centum of its annual net operating revenues before interests as a reserve or sinking fund to answer for amounts advanced to it by the National Government for any loan, credit and indebtedness contracted by the former for which the latter shall be answerable as

primary obligor or guarantor under the provisions of this Act: *Provided, furthermore,* That the setting aside of the amounts mentioned herein shall automatically cease the moment the accumulated sinking fund or reserve exceeds the amounts advanced to the Corporation by the National Government under this Act: And, *Provided, finally,* That the Corporation may periodically make partial payments to the National Government out of the said reserves.

“(b) *Foreign Loans.* – The Corporation is hereby authorized to contract loans, credits, in any convertible foreign currency, or capital goods, and indebtedness from time to time from foreign governments, or any international financial institution or fund source, or to issue bonds, in such amount and in any foreign currency on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

“The President of the Philippines, by himself, or through his authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financial institutions or fund sources, in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development of the economy of the country.

“The President of the Philippines, by himself, or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally as

primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loans, credits, indebtedness and bonds issued up to the amount herein authorized, which shall be over and above the amount which the President of the Philippines is authorized to guarantee under Republic Act Numbered Sixty-One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

“In the contracting of any loan credit or indebtedness under this Act, the President of the Philippines may, when necessary agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, Republic Act Numbered Five Thousand One Hundred Eighty-Three, insofar as such provisions do not pertain to constructions primarily for national defense or security purposes: *Provided, however,* That as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged: *Provided, further,* That in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials

or supplies of the growth, production of manufacture of the Philippines: *Provided, finally,* That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

“The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions.”

SECTION 5. A new section shall be inserted to be known as Section 16-A of the same Act, to read as follows:

“SEC.16-A. *Transitory Provisions.*

“(a) The word ‘President’ in Section 3 (k) of this Act shall refer to the President of the Philippines;

“(b) The phrase ‘General Manager of the Corporation’ in this Act, as amended, shall mean the President of the Corporation; And further, the

phrase ‘Regional Manager’ in this Act, shall mean Corporate Officer;

“(c) Until the President of the Philippines appoints the President of the Corporation, the incumbent General Manager of the Corporation shall, as may be determined by the Board, either act as President of the Corporation or hold such office with such duties and responsibilities as shall be determined by the Board: *Provided,* That upon the assumption of office by the President of the Corporation appointed by the President of the Philippines, said incumbent General Manager of the Corporation shall without any diminution in salary, allowances and benefits, hold such office and perform such duties and responsibilities as shall be determined by the Board.”

SECTION 6. *Repealing Clause.* – All laws, decrees, executive orders, administrative orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SECTION 7. This Decree shall take effect immediately.

Done in the City of Manila, this 25th day of April, in the year of Our Lord, nineteen hundred and seventy-eight.

## PRESIDENTIAL DECREE NO. 1443

AMENDMENT TO SECTION 5 (b) OF REPUBLIC ACT NO. 6395 AS AMENDED BY PRESIDENTIAL DECREE NOS. 380, 395, 758 AND 1360

---

**WHEREAS**, the power expansion program undertaken by the National Power Corporation (NPC) covering a period of ten (10) years would need effective government support through equity contributions to NPC to sustain said programs;

**WHEREAS**, the present Revised Charter of the National Power Corporation limits the government equity contributions to annual appropriation of P 200 Million to pay the balance of the unpaid subscription of the government to the capital stock of the Corporation;

**WHEREAS**, to insure adequate funds and sustain the Corporation's power development, there is an imperative need to appropriate such additional sums as may be necessary to meet the yearly financial requirements of the power program;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree that –

SECTION 1. Section 5 of the Charter of the National Power Corporation, Republic Act No. 6395, as amended by Presidential Decree Nos. 758 and 1360, is hereby further amended to read as follows:

*“SEC. 5. Capital Stock of the Corporation. – The authorized capital stock of the Corporation shall be Fifty Billion Pesos (P 50,000,000,000.00) divided into Five Hundred Million (P 500,000,000) shares having a par value of One Hundred Pesos each, which shares are not to be transferred, negotiated,*

*pledged, mortgaged, or otherwise given a security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.*

*“The remaining Forty-Nine Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:*

*“(a) The sum of Twenty-Nine Million Two Hundred Sixty-Seven Thousand Six Hundred Pesos representing outstanding cost and interest of reparation goods procured by the Corporation pursuant to the provisions of Republic Act Numbered Seventeen Hundred Eighty-Nine, shall be additional paid-in subscription of the Government of the Philippines for Two Hundred Ninety-Two Thousand Six Hundred Seventy-Six shares of stock of said capital stock.*

*“(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonding indebtedness, cost of reparation goods that may be allocated in the future and surpluses of the Corporation as well as from such as shall be appropriated annually out of any*

funds in the National Treasury not otherwise appropriated, be they collections from any or all taxes accruing to the general funds or proceeds from loans, the issuance of bonds, treasury bills or notes which are hereby authorized to be insured or to be issued by the Secretary of Finance for the purpose, such annual appropriation to be programmed and released by the Budget Commission in accordance with the schedule

of cash requirements to be submitted by the corporation until the balance of the unpaid subscription of the Government to the capital stock of the Corporation shall have been paid in full.”

SECTION 2. This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June, in the Year of Our Lord, Nineteen Hundred and Seventy-eight.

### ADMINISTRATIVE ORDER NO. 381

PROVIDING FOR THE FULFILLMENT BY THE NATIONAL POWER CORPORATION OF ITS OBLIGATIONS UNDER THE AGREEMENT FOR THE SALE AND PURCHASE OF NATURAL GAS DATED DECEMBER 30, 1997 WITH SHELL PHILIPPINES EXPLORATION B.V./OCCIDENTAL PHILIPPINES, INC. AND THE COMPLIANCE OF THE NATIONAL GOVERNMENT, THROUGH THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF ENERGY WITH ITS PERFORMANCE UNDERTAKING THEREFOR AND OTHER PURPOSES

---

**WHEREAS**, the Government of the Republic of the Philippines, represented by the Office of Energy Affairs (now the Department of Energy or “DOE”), and Shell Exploration B.V./ Occidental Philippines, Inc., their assignees and successors-in-interest (hereinafter alternatively called the “Service Contractor”, the “Sellers” or “Shell/Oxy” for brevity) entered into a Service Contract (“SC 38”) on December 11, 1990 as clarified by a Memorandum of Clarification between the same parties of the same date, covering the Camago-Malampaya Reservoir, among others, located offshore Northwest Palawan, Philippines (hereinafter called the “Natural Gas Project”);

**WHEREAS**, Shell Exploration B.V. has assigned on December 11, 1990 its rights and obligations under SC 38, as clarified, to Shell Philippines Exploration B.V.;

**WHEREAS**, under SC 38, as clarified, a production sharing scheme has been provided whereby the Government is entitled to receive an amount equal to sixty percent (60%) of the net proceeds from the sale of Petroleum (including Natural Gas) produced from Petroleum Operations (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;

**WHEREAS**, Section 7.3 (b) of SC 38, as clarified, provides that the Office of Energy Affairs, now the DOE, shall be entitled to receive in kind Petroleum, including Natural Gas, equal in value to sixty percent (60%) of net proceeds;

**WHEREAS**, the Service Contractor has also been authorized to market to the National Power Corporation (“NPC”) on behalf of the Government, the Government’s share of Natural Gas produced and saved from the



Contract Area (as defined in SC 38) and to market additional volumes to other domestic buyers;

**WHEREAS**, based on seismic surveys and exploration and appraisal well drilling, Shell/Oxy have established the presence, in the Camago-Malampaya Reservoir in the Contract Area, of Natural Gas in quantities estimated to be sufficient to justify the pursuit of gas-to-power projects having an aggregate power generating capacity of approximately 3,000 MW operating at baseload for twenty years;

**WHEREAS**, NPC's 1,200 MW Ilijan Power Plant located in the province of Batangas is one of the natural gas-fired plants that will utilize, as its main fuel, Natural Gas produced from the Contract Area and provide a ready market for the Natural Gas Project;

**WHEREAS**, the Service Contractor, as the Sellers, and the NPC, as the Buyer entered into an Agreement for the Sale and Purchase of Natural Gas (hereinafter called the "GSPA") on December 30, 1997, relating to the sale and purchase of Natural Gas from the Camago-Malampaya Reservoir for the Ilijan Power Plant and other purposes;

**WHEREAS**, in accordance with the GSPA, the Start Date for the Sellers to tender for delivery and for the Buyer to take Natural Gas shall be on January 2, 2002 subject to the Sellers or the Buyer being ready, respectively, to tender for delivery or receive Natural Gas;

**WHEREAS**, in the event of a low growth scenario, it is forecasted that there may be an excess in the capacity to supply electricity which may affect the capability of NPC to take the full Take-or-Pay Quantity (the "TOPQ") under clause 9 of the GSPA in the early Contract Years of the GSPA;

**WHEREAS**, under clause 9 of the GSPA, Natural Gas not taken but paid for by NPC (hereinafter called "Annual Deficiencies") will be made available to NPC without additional charge subject to the GSPA;

**WHEREAS**, Section 88 (1) of P.D. No. 1445 prohibits the Government from making advance payment for supplies and materials not yet delivered under any contract, except with the prior approval of the President of the Republic of the Philippines;

**WHEREAS**, under Section 44, Chapter 5, Book VI, of the *Revised Administrative Code of 1987* (Executive Order No. 292) amounts received in trust and from the business-type activities of Government may be separately recorded and be disbursed in accordance with such rules and regulations as may be determined by the Permanent Committee created under the same Code;

**WHEREAS**, under Section 8 of R.A. No. 6395 (*Revised NPC Charter*), as amended, the National Government is authorized to guarantee the loans, credits and indebtedness of NPC;

**WHEREAS**, the Government has determined that it can derive the following economic and social benefits from the Natural Gas Project:

- (1) the use of Natural Gas for power generation will effect lower electricity rates resulting in savings estimated at about US \$ 2.2 billion;
- (2) based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US \$ 8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive about US \$ 2.1 billion from the total Government share of US \$ 8.1 billion;
- (3) the Natural Gas Project represents the single largest and most significant investment in the history of Philippine business, with a total private investment

portfolio of about US \$ 4.8 billion: it includes investment in both upstream and downstream operations which in turn will create new job opportunities requiring engineering, technical, professional and skilled manpower;

- (4) the utilization of Natural Gas will displace imported fuels, in the process releasing valuable foreign exchange for other productive uses thereby improving the Philippines' trade balance; the estimated foreign exchange savings that will be realized will be around US \$ 4.5 billion;
- (5) in addition to triggering an inflow of the latest oil and gas technology and skills in the country, the introduction of Natural Gas as an environment-friendly fuel for power generation will have a positive major environment impact; natural gas is a clean fuel for power generation compared to coal and oil and the environmental benefits have been quantified to amount to an estimated savings of about US \$ 1.1 billion;
- (6) the Natural Gas Project offers the opportunity of increasing the country's energy self-reliance; with the substantial realization of this indigenous resource in the energy mix, the country can look forward to gradually veering away from heavily using imported oil and coal in the power generation sector.

**WHEREAS**, the Government's share in Petroleum (including Natural Gas) produced under SC 38, as clarified, will be reduced (i) by the share of concerned local government units pursuant to the *Local Government Code* and (ii) by amounts of income taxes due from and paid on behalf of the Service Contractor (the resulting amounts hereinafter called the "Net Government Share");

**WHEREAS**, to support the development of the Natural Gas Project, the National Government through the DOE, has agreed,

with the conformity of the Department of Finance (the "DOF"), to provide assistance to NPC by utilizing the Net Government Share to satisfy the TOPQ provisions of the GSPA in respect of the part of such TOPQ that is in excess of NPC's Planned Generation Consumption as specified in Table 1 hereof, in consideration of the DOE's being subrogated to NPC's right to recover the corresponding Annual Deficiencies to be supplied by the Sellers under Clause 9 of the GSPA;

**WHEREAS**, the Net Government Share during the early Contract Years of the GSPA may not be sufficient to pay for the Natural Gas payable but not taken by NPC under the TOPQ provisions of the GSPA;

**WHEREAS**, the Sellers have offered to NPC a Deferred Payment Facility (the "Facility") to finance, under terms to be agreed upon, payment for the Natural Gas not taken but payable by NPC under the TOPQ provisions of the GSPA, after the application of the Net Government Share, to the extent of the difference between the TOPQ and the greater of: (i) NPC's Planned Generation Consumption; and (ii) the quantities of Natural Gas actually taken by NPC, for each relevant Contract Year under the GSPA;

**WHEREAS**, in view of the socio-economic and environmental advantages to the country of the Natural Gas Project, full Government support for NPC's fulfillment of its obligations under the GSPA is imperative;

**NOW, THEREFORE, I, FIDEL V. RAMOS**, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. NPC is hereby authorized to make payments under the Take-or-Pay Quantity provisions in clause 9 of the GSPA for Natural Gas, whether delivered and taken or tendered for delivery and not taken. NPC shall adopt all necessary measures to maximize utilization of the TOPQ within the earliest possible period.

SECTION 2. The National Government, through the DOF, shall guarantee, under the terms of a "Performance Undertaking" to the Sellers, the payment of NPC's financial obligations under the GSPA (or under the Facility to the extent such obligations are financed under the Facility) in consideration of fees to be paid by the Sellers to the DOF under such Performance Undertaking.

SECTION 3. The National Government, through the DOE, shall utilize the Net Government Share to satisfy the TOPQ provisions of the GSPA in respect of the part of such TOPQ that is in the excess of NPC's Planned Generation Consumption as specified in Table 1 hereof.

SECTION 4. In the event that the Net Government Share from the DOE in a given Contract Year as defined in the GSPA is insufficient to pay for the Natural Gas not taken but payable under the TOPQ provisions of the GSPA that is in excess of NPC's Planned Generation Consumption, NPC is hereby authorized to avail itself of the Deferred Payment Facility. In addition to the purposes set out in Section 3 hereof, the Net Government Share for the succeeding Contract Years shall be used to pay the Sellers for any amounts outstanding under the Facility.

SECTION 5. Pursuant to Section 44, Chapter 5, Book VI, of the *Revised Administrative Code of 1987* (Executive Order No. 292), a Special Net Government Share Account (the "Account") is hereby created with the Bureau of the Treasury to be sourced from Net Government Share in the proceeds of all petroleum, natural gas and geothermal service contracts, and coal operating contracts of the Government, other than SC 38, under P.D. No. 87, as amended, and other pertinent legislation.

SECTION 6. The Account shall be used to pay the Sellers any amounts outstanding under the Facility or due under the Performance Undertaking in respect of Natural Gas not taken that is in excess of NPC's Planned

Generation Consumption but payable by NPC under the TOPQ provisions of the GSPA.

SECTION 7. In the event that (i) the Net Government Share, (ii) the Facility and (iii) the funds contained in the Account are insufficient or not available for the purposes set forth in Sections 3, 4, and 6 hereof, or other obligations arise under the Performance Undertaking, the balance of the amounts due to the Sellers under the Performance Undertaking shall be paid from other available government sources or funds.

SECTION 8. As soon as NPC is able to utilize Annual Deficiencies, NPC shall pay the DOE the value of the Annual Deficiencies so utilized by NPC to the extent such Annual Deficiencies have been paid by the DOE from the Net Government Share.

SECTION 9. The DOF, DOE and NPC are hereby authorized to enter into any agreements necessary to implement the provisions of this Order.

SECTION 10. The DOF and DOE shall have joint primary jurisdiction over any issue or controversy which may arise from the interpretation of this Order and of other inter-agency agreements which may be executed pursuant hereto, without prejudice to the dispute resolution provisions contained in the GSPA, the Facility and the Performance Undertaking.

SECTION 11. Should any portion or provision of this Order be declared unconstitutional, illegal or contrary to law, the remaining portions or provisions unaffected by such a ruling shall continue to remain in force and in effect.

SECTION 12. This Order shall take effect immediately upon issuance.

Done in the City of Manila, this 17th day of February, in the year of Our Lord, nineteen-hundred and ninety-eight.

## EXECUTIVE ORDER NO. 473

PROVIDING FOR THE SEGREGATION AND UNBUNDLING OF ELECTRICAL POWER TARIFF COMPONENTS OF THE NATIONAL POWER CORPORATION AND THE FRANCHISED ELECTRIC UTILITIES

---

**WHEREAS**, Section 28 of Article II of the Constitution provides that “the State adopts and implements a policy of full public disclosure of all its transactions involving public interest”;

**WHEREAS**, Section 5 of Article II of the Constitution provides that “the protection of x x x property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy”;

**WHEREAS**, wholesome and constructive competition promotes satisfaction and efficiency in the management and operation of the public service;

**WHEREAS**, the generation, transmission, and distribution of electric power are separate and distinct fields of activity with different cost considerations;

**WHEREAS**, the National Power Corporation (NPC) and franchised electric utilities have been traditionally providing electric power service to customers whereby the generation, transmission, and distribution of electric power are integrated or combined and charged as a single tariff;

**WHEREAS**, Executive Order No. 215, series of 1987, and its implementing rules and regulations allowing private sector participation in power generation prescribes the transmission or wheeling of power to electric utilities and mandates the NPC and franchised electric utilities with transmission and/or distribution facilities of 69 kilovolts (KV) or above to file with the Energy Regulatory Board (ERB) standard interconnection policies and procedures, and wheeling tariffs for the

ERB’s approval;

**WHEREAS**, in the interest of transparency and accountability and consistent with Executive Order No. 215, series of 1987, and its implementing rules and regulations and to rationalize the economic and efficient generation, transmission and distribution of electricity, there is a need to identify, segregate and “unbundle” the different components of the electricity tariff that NPC and the franchised electric utilities are charging their respective customers;

**WHEREAS**, in the decision in ERB Case No. 96-118, dated June 11, 1997, the ERB approved an open access transmission tariff and tariff for ancillary services to allow non-discriminatory use of NPC’s transmission grid by private sector generating facilities and electric utilities;

**WHEREAS**, pursuant to Republic Act No. 7638, series of 1992, the Department of Energy (DOE) is mandated, among others, to provide for an environment conducive to free and active private sector participation and investment in all energy activities; and

**WHEREAS**, ERB is mandated to determine, fix and prescribe the electric power rates of NPC, private electric utilities, and rural electric cooperatives.

**NOW, THEREFORE**, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, consistent with the foregoing Constitutional policies and legal mandates, do hereby order the ERB, to formulate and adopt the necessary guidelines to identify the different types of services provided and the corresponding

tariffs charged to customers, hereinafter referred to as unbundled tariffs, by NPC and franchised electric utilities, within a period of sixty (60) days from the effectivity of this order.

For this purpose, unbundled tariffs shall include, as applicable but not limited to, generation charges, transmission, sub-transmission and distribution charges,

ancillary service charges and service cost for supply of electricity.

This Executive Order shall take effect immediately.

Done in the City of Manila, this 17th day of April in the year of our Lord, nineteen hundred and ninety-eight.

### EXECUTIVE ORDER NO. 370

AUTHORIZING AND APPROVING THE DIRECT ASSUMPTION BY THE NATIONAL GOVERNMENT OF A PORTION OF THE FINANCIAL OBLIGATIONS OF THE NATIONAL POWER CORPORATION IN ACCORDANCE WITH SECTION 32 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

---

**WHEREAS**, pursuant to Section 32 of Republic Act No. 9136 approved on 8 June 2001 otherwise known as the "Electric Power Industry Reform Act" (EPIRA), the National Government was mandated to assume directly a portion of the financial obligations of the National Power Corporation (NPC) in an amount not to exceed Two Hundred Billion Pesos (P 200,000,000,000.00);

**WHEREAS**, Section 49 of the EPIRA likewise mandated that all existing generation assets, real estate and all other disposable assets, as well as the outstanding liabilities of NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness, shall be transferred to and assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.);

**WHEREAS**, the consent of NPC's creditors under various loan and financial agreements is required for the formal transfer of NPC's assets and liabilities to PSALM Corp;

**WHEREAS**, obtaining the consent of NPC's creditors would be facilitated by the direct assumption by the National

Government of Two Hundred Billion Pesos (P 200,000,000,000.00) of NPC's financial obligations as contemplated under Section 32 of the EPIRA;

**WHEREAS**, the Development Budget Coordination Committee under the National Economic and Development Authority (NEDA) Board, which is tasked, among others, with the determination of the fiscal program of the National Government, has recommended that the National Government, pursuant to the EPIRA, directly assume a portion of the financial obligations of NPC in an amount not to exceed Two Hundred Billion Pesos (P 200,000,000,000.00) beginning on 31 December 2004;

**WHEREAS**, pursuant to Executive Order No. 292 dated 25 July 1987, otherwise known as the "Administrative Code of 1987", the Department of Finance shall be primarily responsible for the sound and efficient management of the financial resources of the National Government, its subdivisions, agencies and instrumentalities and for the review, approval and management of all public sector debt, whether foreign or

domestic, with the end in view of ensuring that all borrowed funds are effectively utilized and all such obligations are promptly serviced by the government;

**NOW, THEREFORE**, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. *Assumption of NPC's Financial obligations by the National Government.* – Pursuant to Section 32 of the EPIRA, the National Government shall directly assume a portion of the financial obligations of the NPC in an amount not to exceed Two Hundred Billion Pesos (P 200,000,000,000.00) beginning on 31 December 2004, in accordance with a schedule to be approved by the Development Budget Coordination Committee.

SECTION 2. *Lead Agency.* – The Department of Finance (DOF), in consultation with the Department of Budget and Management (DBM) and the Commission on Audit (COA), shall address and resolve all issues relating to the assumption by the National Government of NPC's financial obligations as provided in Section 1 hereof, including, but not limited to:

- (a) identification of specific debts to be assumed and determining the levels of annual debt absorption;
- (b) the arrangements between PSALM Corp., NPC, and the National Government;
- (c) the proper treatment and recording of the transactions in the books of account of the National Government and NPC; and
- (d) the implementation of the assumption by the National Government of NPC's

financial obligations.

For this purpose, the DOF may call upon the DBM, the Department of Energy, the NEDA, and any other agency of the Government for such assistance as may be necessary in the performance of its functions as provided herein. All heads of departments, agencies, bureaus and offices, including government-owned or -controlled corporations, are hereby enjoined to render full assistance and cooperation to the Secretary of Finance and provide such information and data as may be required to carry out the implement the provisions of this Order.

SECTION 3. *Signing Authority.* – The Secretary of Finance is hereby authorized to enter into, conclude and sign, for and on behalf of the National Government, such agreements, deeds, and any and all other documents necessary to implement, and to render valid and enforceable, the assumption by the National Government of NPC's financial obligations in accordance with this Order.

In relation to any financial obligation of NPC directly assumed by the National Government, the DOF shall have full authority and discretion to determine in each instance the specific modality for giving legal effect to the assumption of liability by the National Government, so long as the ultimate financial responsibility for the payment of such financial obligation of NPC rests with the National Government.

SECTION 4. This Executive Order shall take effect immediately after its publication in a newspaper of general circulation.

Done in the City of Manila, this 12th day October, in the year of Our Lord, Two Thousand and Four.



# Chapter V

## National Electrification Administration

### REPUBLIC ACT NO. 2717

#### AN ACT TO CREATE THE ELECTRIFICATION ADMINISTRATION, AND OTHER PURPOSES

---

SECTION 1. This Act shall be known as the “Electrification Administration Act.”

SECTION 2. It is declared to be the policy of the Republic of the Philippines to furnish cheap and dependable electric power and facilities in order to promote and accelerate the agricultural and industrial development of the country.

SECTION 3. For the purpose of carrying out the policy enunciated in this Act, especially in the rural areas, there is hereby created and established an agency to be known as the “Electrification Administration,” all the powers of which shall be exercised by an Administrator, who shall be appointed by the President, with the consent of the Commission on Appointments, for a term of ten years and who shall receive an annual compensation of Twelve Thousand Pesos, which may be increased to not more than Twenty-Five Thousand Pesos as the President may deem proper.

SECTION 4. The Administrator is authorized (a) to make loans for the electrification and the furnishing of electric energy, particularly in rural areas; (b) to plan, coordinate program and supervise comprehensive, efficient and dependable producing, transmitting and distributing systems for electric power; (c) to make, or cause to be made, studies

investigations, and reports concerning the condition and progress of electrification of any region of the country, principally the furnishing of electric power ultimate consumers; (d) to encourage and aid local governments and cooperative electric consumers associations in undertaking the public service of electric power, heat and light systems, and (e) to publish and disseminate information with respect thereto.

SECTION 5. The Government Service Insurance System, the Social Security System and the Development Bank of the Philippines are hereby authorized and directed to make loans not exceeding in aggregate the amount of Fifty Million Pesos with interest at a rate not exceeding five per cent per annum to local government, electric consumers cooperative associations duly organized under the laws of the Philippines, and to Filipino electric franchise holders now operating, upon recommendation of the Administrator and with the approval of the National Economic Council, for the purpose of constructing, operating, maintaining and administering electric power, heat and light system for service to the public and/or for the purpose of purchasing any existing electric public service.

SECTION 6. As a revolving fund of the Electrification Administration, there is hereby



appropriated the sum of Five Million Pesos for the fiscal year nineteen hundred sixty-nineteen hundred sixty-one, subject to availability of funds, and the same amount each year for the next four fiscal years. Any sum as assets which NEC-ICA may assign to the Electrification Administration shall form part of this revolving fund, except when it is expressly set aside for research or operating expenses. The President of the Philippines is empowered to allocate and transfer to the Electrification Administration any sums or assets received from or out of Japanese reparations and loans obtained under the Japanese Reparations Treaty which shall also form part of the revolving fund, except when it is expressly set aside for research or operating expenses.

SECTION 7. Out of the revolving fund, the Administration is authorized and empowered to make loans to local governments, electric consumers cooperative associations duly organized under the laws of the Philippines, and to Filipino electric franchise holders now operating, for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy, particularly in rural areas. Such loans shall be on such terms and conditions relating to the expenditure of the moneys loaned and the security therefor as the Administrator shall determine, and may be payable in whole or in part out of the borrower's income: *Provided*, That all such loans shall be self-liquidating within a period of not less than twenty-five years, and shall bear interest at a rate not to exceed three per centum per annum, except loans from funds taken from Japanese loans under the Japanese Reparations Treaty, in which case the interest shall not exceed the interest on Japanese loans: *Provided, further*, That loans shall not be made unless the Administrator finds and certifies, that in his judgment the security therefor is reasonably adequate and such loans will be repaid within the time agreed: *Provided, further*, That the contract of loan shall contain a stipulation that the rates of any borrowing electric public

service shall be fixed so that its profit shall not exceed six per cent per annum of the rate base, notwithstanding any provision of law providing higher rate of profit.

SECTION 8. The Administrator is authorized and empowered to make loans for the purpose of financing the wiring of the premises of persons in rural areas and the acquisition and installation of electrical plumbing appliances and equipment. Such loans may be made to any Filipino citizen or to any borrower of funds under Section seven hereof, or to any person, association or corporation supplying or installing said wiring, appliances or equipment. Such loans shall be for such terms, subject to such conditions, and so secured as reasonably to assure repayment thereof, and shall be at a rate of interest not to exceed five per centum per annum.

SECTION 9. The Administrator is authorized and empowered to extend the time of payment of interest or principal of any loan made by him or pursuant to this Act.

SECTION 10. The Administrator is authorized and empowered to (a) bid for and purchase at any foreclosure or other sale, or otherwise to acquire property pledged or mortgaged to secure any loan made pursuant to this Act; (b) pay the purchase price and any costs and expenses incurred in connection therewith; (c) accept title to any property so purchased or acquired in the name of the Republic of the Philippines; (d) operate or lease such property for such period as may be deemed necessary or advisable to protect the investment therein; and (e) sell such property so purchased or acquired upon such terms and for such consideration as the Administrator shall determine to be reasonable.

No borrower of funds shall, without the approval of the Administrator, sell or dispose of the property, rights or franchises acquired under the provisions of this Act, until any loan obtained from the Electrification Administration, including all interest and charges, shall have been repaid.

SECTION 11. To enable the Electrification Administration to implement more effectively the provisions of this Act, the Administrator shall have a technical staff and such other staffs or personnel as he may deem proper. The Administrator shall appoint, fix the compensation and determine the duties of such staff, officials and employees as the exigencies of the service may require.

SECTION 12. The Administrator may call upon any department or agency of the Government for assistance or cooperation on any matter connected with the functions and powers of the Electrification Administration.

The Administrator shall execute all electrification projects that may be authorized in any *Public Works Acts*; and for this purpose, he may call for assistance and cooperation from the National Power Corporation and the Mechanical and Electrical Division of the Bureau of Public Works.

SECTION 13. The Administration shall present annually to the Congress not later than the last day of January in each year the full report of its activities under this Act.

SECTION 14. No member, officer, attorney, agent, or employee of the Electrification Administration shall in any manner, directly or indirectly, participate in the determination of any question affecting any corporation or association in which he is directly or indirectly interested. Any person violating the provisions of this section shall be removed from office and shall upon conviction be punished by a fine not to exceed ten thousand pesos, or imprisonment not to exceed five years, or both.

SECTION 15. No officer or employee of the Electrification Administration nor any government official who may exercise executive or supervisory authority over the Electrification Administration, either directly or indirectly, for himself or as the representative or agent of others, shall become a guarantor, indorser, or surety for

loans from the Electrification Administration to others, or in any manner be an obligor for money borrowed from the Electrification Administration. Any such officer or employee who violates the provisions of this section shall be immediately removed by competent authority and said officer or employee shall be punished by a fine of not less than One Thousand Pesos nor more than Five Thousand Pesos, or imprisonment for not less than one year nor more than five years, or both.

SECTION 16. No loan shall be granted by the Electrification Administration to any person related to the Administrator within the third degree of consanguinity or affinity, or to any corporation, partnership, or company wherein the Administrator is a shareholder. Violation by the Administrator of the provisions of this section is a sufficient cause for his removal by the President of the Philippines; and the Administrator shall, furthermore, be punished as provided in the next preceding section.

SECTION 17. No fee, commission, gift, or charge of any kind shall be exacted, demanded, or paid for obtaining loans from the Electrification Administration, and any officer, employee or agent of the Administration exacting, demanding or receiving any fee, commission, gift or charge of any kind for service in obtaining a loan, shall be punished by a fine of not less than One Thousand nor more than Three Thousand Pesos, or imprisonment for not less than one year nor more than three years, or both.

SECTION 18. Any person who, for the purpose of obtaining, renewing, or increasing a loan or the extension of the period thereof, on his own or another's behalf, shall give any false information or cause through his intrigue or machination the existence and production of any false information with regard to the identity, situation, productivity, or value of security, or with regard to a point which affect the granting or denial of the loan, whether the latter has been consummated or not, and every officer or employee of the

Electrification Administration who, through connivance or negligence, shall allow by action or omission such false information to pass unnoticed, thereby causing damage to the Electrification Administration or exposing the latter to the danger of suffering such damage, shall be punished by a fine of not less than the amount of the loan obtained or applied for, nor more than three times such amount, or imprisonment for not less than three months nor more than three years, or both.

SECTION 19. Any officer or employee of the Electrification Administration who violates or permits any agent or any other officer or employee of the Administration or any other person to violate any of the provisions of this Act not specifically punished in the preceding sections, and any person violating any provision of this Act or aiding and abetting

the violation thereof, shall be punished by a fine not to exceed Ten Thousand Pesos, or imprisonment for not more than five years.

SECTION 20. If any provision of this Act, or the application of such provision to any person or circumstance is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SECTION 21. All Acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

SECTION 22. This Act shall take effect upon its approval.

*Enacted without Executive approval, June 19, 1960.*

## REPUBLIC ACT NO. 6038

AN ACT DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, PROVIDING FOR THE ORGANIZATION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATION, THE REPEAL OF R.A. NO. 2717, AND FOR OTHER PURPOSES

---

### CHAPTER I POLICY AND DEFINITIONS

SECTION 1. *Title.* – This Act shall be referred to as the “National Electrification Administration Act.”

SEC. 2. *Declaration of National Policy.* – The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the State to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State

shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing diligently to pursue this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives particularly shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being

by their nature substantially self-regulating and the Congress having, by the enactment of this Act, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject to minimal regulation by other administrative agencies.

SEC. 3. *Definitions.* – As used in this Act, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) “NEA” shall mean the National Electrification Administration, “Board of Administrators” shall mean the Board of Administrators, and “Administrator” shall mean the Administrator, provided for in this Act.
- (b) “Cooperative” shall mean a corporation organized under this Act or a cooperative supplying or empowered to supply service which has heretofore been organized under the *Philippine Non-Agricultural Cooperative Act*, whether converted under this Act or not.
- (c) “Public service entities” shall mean (1) a cooperative and (2) any local government or (3) other privately-owned public service entities in operation which supply and are empowered to supply service and are subject to regulation by the Public Service Commission.
- (d) “Person” shall mean any natural person, firm, association, cooperative, corporation, business trust, partnership, the National Government or any political subdivision, agency or instrumentality thereof.
- (e) “Service” shall mean electric service, either at wholesale or retail, including the furnishing of any auxiliary or related service.
- (f) “Dependable and adequate service” shall mean service that, consistent with normal standards and levels of service based upon good utility management and operating practices, is sufficient in quantity, having regard for the demands for service currently existing and reasonably anticipated within the foreseeable future, and that is accessible on a constant and continuous basis except for outages occasioned by the need for normal repair, maintenance, construction or renovation work or by acts beyond the reasonable ability of the public service entity to prevent or control.
- (g) “Area” shall mean the geographic area franchised to a public service entity or any lesser geographic area for service to which the public service entity has borrowed or may borrow funds for the acquisition or construction and operation, maintenance or renovation of service facilities.
- (h) “Area coverage” shall mean dependable and adequate service that, on the basis of reasonable and standard extension and service policies, rates, charges and other terms and conditions, will be or is being made available to all persons within the affected area as above defined who request such service and are able and willing to abide by and comply with all such reasonable and standard terms and conditions, regardless of the relative location of such persons within the affected area or of their proximity to existing or proposed service facilities: *Provided*, That the financial feasibility of the public service entity’s entire operation is not thereby impaired.
- (i) “Interest rate per centum per annum” shall mean an interest rate that is accrued solely upon the unpaid balance of any loan principal which has actually been advanced to a borrower and upon any

interest payment which has become due or been deferred and has not been paid by the borrower, computed on an annual basis.

- (j) "Loan" shall mean a loan the total principal amount of which, as and when required for application to the purposes thereof, is, at the time of the making thereof, assured from funds that are or will become available therefore.
- (k) "GSIS", "SSS", "DBP", "NEC", "NEC-FS" and "NPC" shall mean, respectively, Government Service Insurance System, Social Security System, Development Bank of the Philippines, National Economic Council, National Economic Council-Foreign Source and National Power Corporation.
- (l) "Average interest rate" shall mean that average which is determined by dividing (a) the sum of the yearly interest payment applying to all outstanding borrowed indebtedness and of the yearly interest payment that will apply to the new borrowed indebtedness being proposed (but excluding interest that will or may be paid on deferred or overdue interest payments) by (b) the sum of all outstanding borrowed indebtedness and the new borrowed indebtedness being proposed.
- (m) "Non-profit" shall mean that a cooperative shall not engage in business for the purpose of making a profit for itself or its patrons, but it shall not mean that a cooperative may not account on a patronage basis to its patrons for any receipts in excess of its expenses in relation to its operations in serving such patrons or in relation to investments of any of its surplus funds pending their use by the cooperative or their refund to patrons; nor shall it mean that such excess receipts may not be refunded to its patrons, or may not be converted

into patron-furnished capital subject to later redemption and retirement by the cooperative.

- (n) "Board" shall mean the board of directors of a cooperative.

## CHAPTER II THE NATIONAL ELECTRIFICATION ADMINISTRATION

*SEC. 4. National Electrification Administration. Board of Administrators.* – For the purpose of administering the provisions of this Act there is hereby established an agency to be known as the National Electrification Administration, the powers of which shall be vested in and exercised by a Board of Administrators composed of a Chairman and four members, one of whom shall be the Administrator, as ex-officio member. The Chairman and the three other members shall be appointed by the President of the Philippines with the consent of the Commission on Appointments to serve for a term of six years: *Provided*, That the terms of the first appointees shall be six years for the Chairman and one member and three years for two members, respectively, and that the term of the ex-officio member shall be co-terminus with his term as the Administrator. All vacancies, except through expiration of the term, shall be filed for the unexpired term only. The Chairman and every member of the Board of Administrators shall serve without compensation and any form of allowances but, unless he is a public official or employee, shall be entitled to a *per diem* of not more than fifty pesos for each meeting actually attended by him: *Provided*, That the total of such *per diems* shall not exceed five hundred pesos per month per member.

The Board of Administrators shall meet regularly at least twice a month and as often as the exigencies of the NEA's affairs demand. The presence of at least three members shall constitute a quorum which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members

present shall be necessary for the approval of any resolution, decision or order of the Board. In the absence of the Chairman at a Board meeting duly called, the Administrator, as *ex-officio* member shall preside over the meeting.

The Board of Administrators is hereby authorized to carry out the provisions and purposes of this Act, and, subject to the approval of the President, to promulgate rules and regulations to govern its proceedings and the exercise of the NEA's authority, to organize, reorganize and determine the NEA's personnel and its staffing pattern, and to define their powers and duties.

The Board of Administrators shall have under its control and supervision an Administrator who shall serve as the Chief Executive Officer of the NEA responsible for carrying out its purposes and programs under the direction of the Board of Administrators, exercise such power and authority as the Board may delegate to him, and perform such acts as he is under this Act authorized and directed and as the Board may authorize and/or direct him so to do. The Administrator shall be a person of known integrity, competence and experience in technical and executive fields related to the purposes of this Act. He shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall receive a salary to be fixed by the Board of Administrators with the approval of the President not exceeding twenty four thousand pesos per annum. He shall serve for a term of six years and shall not be removable except for cause.

SEC. 5. *Authorities, Powers and Directives.* – The Board of Administrators is hereby authorized, empowered and directed to promote, encourage and assist public service entities, particularly cooperatives, to the end of achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible; and for such purpose it is hereby, without

limiting the generality of the foregoing and in addition to other authorizations, powers and directives established by this Act, specifically authorized, empowered and directed:

- (a) To make loans to public service entities, with preference to cooperatives for the construction or acquisition of generating, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service and thereafter to make loans for the restoration, improvement or enlargement of such facilities: *Provided*, That the public service entity applying for a loan, if neither a cooperative nor a local government, must be in operation at the time of application;
- (b) To assist public service entities, with preference to cooperatives, in planning, developing, coordinating, establishing, operating, maintaining, repairing and renovating facilities and systems for supplying area coverage service, and for such purpose to furnish, to the extent possible from the NEA technical staff and otherwise but without charge therefor, technical and professional assistance and guidance, information, data and the results of any investigations, studies or reports conducted or made by the NEA;
- (c) When sufficient funds therefor are not available from the revolving fund hereinafter established, to serve, without charge for such service, as the agent of public service entities which are cooperatives or local governments in securing loans directly to such entities from any other source for the same purposes for which NEA loans are authorized in subparagraph (a) of this section; and to approve or disapprove any other loans to cooperatives as provided for in section 11 of this Act;
- (d) To receive from cooperatives all articles of incorporation, amendment,

consolidation, merger, conversion and dissolution, and all certificates of changes in the location of principal offices and of elections to dissolve, and, upon determining that such are in conformity with this Act, to certify the same, to file them in the records of the NEA, and to maintain a registry of such filing: *Provided*, That the duties specified in this subsection shall be performed by the Administrator under the supervision of the Board of Administrators;

- (e) To so cooperate and coordinate the NEA's administration with, to exchange such information, studies and reports with, and to seek such cooperation and coordination from, other departments, agencies and instrumentalities of the National Government, including the National Power Corporation, as will most effectively conduce to the achievement of the purposes of this Act; and
- (f) At least annually, not later than January 31st, to report to the President and the Congress on the status of electrification of the Philippines, including a comprehensive reporting of loans made, loan funds advanced, loans secured from other sources and the advances thereof, the names and locations of the borrowers, the number of services contemplated by such loans, the number actually receiving service as a result of such loans, the number of electrified and the remaining number of unelectrified premises throughout the Nation, the amounts of usage by consumers, loan and other activities programmed for the ensuing year, and all such other information and data as will accurately reveal the progress being made toward achievement of the purposes of this Act; and to publish such report for dissemination to and use by other interested departments, agencies and instrumentalities of the National Government and by borrowers under this Act.

SEC. 6. *Loans from GSIS, SSS and DBP.* – The GSIS, SSS and DBP are hereby authorized, empowered and directed to make loans directly to public service entities for the same purposes for which NEA loans are authorized in subparagraph (a) of section five. Any other provision of law to the contrary notwithstanding, such a loan shall be made by any of the foregoing three whenever:

- (a) Application for such loan has been made to it on behalf of such entity by the Administrator, accompanied by his determination and certification that (1) sufficient funds for such a loan are not available out of the revolving fund hereinafter established; (2) such loan is necessary to enable the borrower to accomplish the loan purposes established in subparagraph (a) of section five; (3) in his judgment the loan will be repaid with interest on schedule and will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower to the NEA or any other lending source below than level of such security and ability were such additional borrowing not being undertaken; (4) no lender other than the NEA or if such be the case the lender being applied to, then holds or has the right to secure a first lien on the properties of the borrower to be financed by such loan; and (5) his willingness in relation to the properties to be financed by such loan, (A) to release any after-acquired property clause in any lien the NEA already has on the borrower's properties to, or (B) to share any such lien on a co-equal basis in proportion to their respective loans with, or (C) to subordinate any such lien in favor of, the lender; and
- (b) The NEC determines and certifies to the lender: (1) that the funds of such lender, having regard for the amount, term, interest charge, repayment schedule and security of such loan, are sufficient and

available for such purpose; (2) that such loan will not impair or unduly deter the achievement of the primary purposes for which the lender has accumulated such funds; (3) the loan term, which shall not exceed thirty-five years; (4) the repayment schedule, which shall not cause payments of principal or interest to come due more often than every quarter; (5) the interest rate, which shall not exceed (A) the lowest interest rate being then received by the lender on loans of ten-or-more-year terms made by the lender during the preceding twelve months (or, if no such loans have been made during the preceding twelve months, on such loans made by the lender during the preceding five years; or, if no such loans have been made during the preceding five years, on the longest-term loan made by the lender during the preceding three years), or (B) six per centum per annum, whichever is the lesser: *Provided*, That if six per centum per annum is lesser, the NEC may, but shall not be required to, fix the interest rate to be not in excess of (i) such higher rate as will result in an average interest rate to the borrower of not in excess of six per centum per annum or (ii) the lowest interest rate determined under (A) above, whichever is the lesser; and (B) the other terms and conditions of the loan;

- (c) Such loan, when added to the outstanding principal indebtedness to such lender for any other loans made pursuant to this section, will not aggregate in excess of one hundred million pesos; and
- (d) The borrower executes such documents as shall be necessary to effectuate such borrowing and give the lender as security therefor an exclusive or shared first lien on the properties being financed by the loan, and the Administrator executes such instruments as shall be necessary to release to the lender any after-acquired property clause of, or to share with or subordinate in favor of the lender, any

such lien the NEA then already has upon such borrower's properties, whichever the NEC shall require.

The beginning schedule of repayment of the principal of such loans, of the interest charges thereon, or both, may be deferred for a period not to exceed seven years from the advance of such principal, upon the Administrator's request and if the NEC certifies to the lender its approval thereof, in which event provision for such deferment shall be incorporated into the loan agreement and interest shall accrue and be payable on any interest payments so deferred.

Advances to the borrower of loans made pursuant to this section, and advances to a cooperative borrower from any other non-NEA source, shall be made directly to the borrower by the lender at such time or times in such amount or amounts as the Administrator approves; and the Administrator, with respect to such loans, advances, application by the borrower of such advances to their purposes, repayments by the borrower of the principal of and interest upon such loans, and all operations of the borrower affecting the loan security and the borrower's conformity with loan agreements, shall establish and implement the same procedures and requirements affecting the borrower as though such loan had been made by the NEA. Annually, and at any time a borrower's condition indicates that it may default in its loan agreement, or whenever so requested by such a lender or by the NEC, the NEA shall furnish a current and comprehensive report of the status and operations of the borrower relating to its ability to conform with its loan agreement and to its financial and operating conditions in general. To the extent that a loan made pursuant to this section has not been advanced to the borrower within five years after the effective date of the loan agreement, the same shall be rescinded unless the lender and borrower, upon the NEA's approval, agree otherwise, which agreement shall be executed by all three in writing and become a part of the loan agreement.



This section shall not constitute a limitation on the right and ability otherwise lawfully possessed by such a lender to make such loans to such public service entities on terms and conditions more favorable to such entities than herein prescribed.

SECTION 7. *Revolving Fund.* – A revolving fund, out of which the Board of Administrators is hereby authorized, empowered and directed to make loans to public service entities for the purposes set forth in subparagraph (a) of section 5, is hereby established to consist of the following:

- (a) Any portion of the Twenty-five Million pesos heretofore appropriated pursuant to Section 6 of Republic Act 2717 that has not already been loaned or, if loaned, that has not already been advanced and for lawful reason will not be advanced;
- (b) The following sums, which are hereby appropriated: Twenty Million Pesos for the fiscal year 1970 and the same amount each year for the next nine fiscal years: *Provided*, That the Congress shall not be limited as to the amount it may further appropriate in any year for this purpose;
- (c) Any fund or physical asset which NEC-FS may make available to the NEA for such loan purposes;
- (d) Any fund or physical asset which the President, pursuant to Section six of Republic Act Numbered Twenty-seven hundred seventeen, may have already made, or, as he is hereby authorized and empowered so to do, may hereafter make available to the NEA for such loan purposes from any sum or assets received from or out of Japanese reparations including proceeds from the sale thereof or loans obtained under the Japanese Reparations Treaty;
- (e) All moneys not already expended which have heretofore been received by the

Electrification Administration from payments to it of the principal of and interest upon any loans it has heretofore made pursuant to Republic Act Numbered Twenty-seven hundred seventeen, except to the extent such moneys may have already been allocated to the EA for administrative or other purposes, and all moneys hereafter received by the NEA from payments to it of the principal of and interest upon any loans heretofore made under Republic Act Numbered Twenty-seven hundred seventeen or hereafter made under this Act;

- (f) The sum of Two Million Dollars worth of goods and services from Japanese Reparations for the fourteenth year schedule and the same amount each year for the next four year schedules, which are hereby allocated to the revolving fund of the NEA;
- (g) The sum of Two Million Pesos for the fiscal year 1970 and the same amount each year for the next four fiscal years, which are hereby allocated to the revolving fund of the NEA out of the proceeds of the sale of Japanese Reparations Goods; and
- (h) The proceeds corresponding to the share of the National Government in all franchise taxes paid by electric service entities, which are hereby appropriated for the purpose of augmenting the revolving fund.

No portion of the revolving fund shall, without the prior approval of the Congress, be expended by the NEA for any purpose other than the loans herein and in section nine authorized and the acquisition authorized in section eleven. The Board of Administrators shall annually, not later than January thirty-first, report to the Congress and the President the current status and amount of the revolving fund and the anticipated status and amount thereof in the ensuing year.

SEC. 8. *Loan Standards.* – In making a loan authorized in section 7, the Board of Administrators is hereby authorized, empowered and directed:

- (a) Before making such loans, to determine and certify that (1) the project or projects being financed thereby are financially feasible for the purpose of, and will result in, area coverage in the area or areas to be affected thereby; (2) funds are or will be available for the total advance of such loan to the borrower on the schedule contemplated by the loan agreement, subject only to the borrower's compliance with the loan agreement; and (3) in the NEA's judgment the security for such loan is reasonably adequate and the principal of and interest upon such loan will be repaid on schedule and within the time agreed;
- (b) To require that such loan be self-liquidating within a term to be fixed by the NEA of not in excess of thirty-five years and, unless the borrower requests a shorter term, of not less than twenty-five years;
- (c) To impose upon the loan principal an interest charge to be fixed by the NEA at not in excess of three *per centum* per annum;
- (d) To fix the schedule for repayment of the principal of and the interest upon such loan in installments recurring not more often than every quarter, which installments may be in unequal amounts and larger in the later years of the loan term than in the earlier years;
- (e) To require in the loan agreement that the borrower's rates, charges, rules and regulations, policies and all other terms and conditions affecting its extension and furnishing of service shall be such as to assure achievement of the loan purposes, and that the same shall be filed with and

for such purpose approved by the Board of Administrators before being put into effect or changed by the borrower; and

- (f) Subject to the foregoing, to establish and require compliance with such procedures, rules and regulations as the Board of Administrators may determine to be necessary or appropriate to assure that the purposes of such loan will be timely achieved and that the loan agreement and the provisions of this Act will be complied with.

Notwithstanding the foregoing provisions of this section, the Board of Administrators may fix any higher interest rate or any shorter or longer term for loans made from funds or physical assets made available from sources stated in subparagraphs (c) and (d) of section 7, but only if and not to exceed the extent to which such is required by, or otherwise is made a condition of the availability of such funds or assets from, such sources: *Provided*, That the Board of Administrators may, unless the conditions attaching to the availability of such funds require otherwise, combine such funds with the other funds in the revolving fund and fix a blended interest charge on loans made generally therefrom at not in excess of the rate which will assure repayment to the revolving fund of interest at three *per centum* per annum on that portion of funds not derived from such sources and of such higher interest per centum per annum as is required on that portion of funds that is derived from such sources.

SECTION 9. *Loans for Electric-Related Purposes.* – The Board of Administrators is hereby authorized, empowered and directed to make loans, out of the revolving fund, for the purpose of financing the wiring of premises of persons served or to be served as a result of loans made under Section 7, and for the acquisition and installation by such persons of electrically-powered appliances, equipment, fixtures and machinery of all kinds for commercial, agricultural and industrial

uses. Such loans may be made directly (a) to public service entities which have received loans under section 7, which entities shall relend such funds to persons served or to be served by them, or (b) to any person served or to be served by such an entity. Such loans shall be made for such terms, shall bear interest at such rate not to exceed six per centum per annum, and shall be subject to such other terms and conditions as the Board of Administrators shall determine to be necessary and appropriate to assure repayment thereof within the time agreed: *Provided, however,* That at no time shall the total of loans made for the purposes stated under this section exceed ten per centum of the total of the revolving fund nor shall any such loan to any borrower exceed ten per centum of the total loan to such borrower from the revolving fund.

SECTION 10. *Authority to Extend Loans and Release or Subordinate Securities.* – Whenever in its judgment such is necessary or desirable to achieve the purposes of this Act, and particularly if such is necessary to make or keep a project operationally viable, the Board of Administrators is hereby authorized and empowered (a) by agreement with the borrower, to extend the time of payment of principal or interest, or both, beyond the loan agreement term of any loan made by the NEA under this Act, or to defer, for not in excess of seven years, the time when the repayment schedule for principal or interest, or both, shall begin, or to re-schedule payments of principal or interest, or both, or when none of the foregoing is sufficient, to compromise and amount owing by a borrower to the NEA subject to provisions of existing laws; and (b) upon the NEA's determination that such is necessary or desirable for the purpose of enabling a borrower to accomplish the purposes for which it has already received an NEA loan and that such will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower below the level of such security and ability were

additional borrowings from another lender not undertaken, to release any after-acquired property clause contained in any lien the NEA holds on a borrower's properties to, or to share any such lien on a co-equal basis in proportion to their respective loans with, or to subordinate any such lien in favor of, any other lender of funds to a public service entity for the purposes for which loans are authorized under this Act.

SECTION 11. *Enforcement Powers.* – If any public service entity which has borrowed funds from the NEA, or from any other lender through the services of the NEA as its agent, or from any other lender with the NEA's lawfully required prior approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of a loan agreement or of any rule or regulation promulgated by the NEA in administering the provisions of this Act, the Board of Administrators is hereby authorized and empowered in its discretion to do any or any combination of the following:

- (a) Refuse to make, secure as agent, or give any lawfully required approval to, any new loan to the borrower;
- (b) Withhold without limitation the NEA's advancement, or withhold its approval for any other lender with respect to which the NEA has such approving power to make advancement, of funds pursuant to any loan already made to the borrower;
- (c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;
- (d) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA may, subject to any superior or co-equal rights in such lien held by any other lender, (1) bid for and purchase or otherwise acquire such properties, (2) pay the purchase

price thereof and any costs and expenses incurred in connection therewith out of the revolving fund, (3) accept title to such properties in the name of the Republic of the Philippines, and (4) operate or lease such properties for such period, not exceeding five years, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of foreclosed systems, but the NEA shall, within five years after acquiring such properties, sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Act; or

- (e) Take any other remedial measure for which the loan agreement may provide.

In addition to the foregoing, the Board of Administrators may, at its own instance and in the name of the NEA, petition any court having jurisdiction for such purpose or any administrative agency possessing regulatory powers for such purpose (including the Public Service Commission) to issue such order and afford such lawful relief as may be necessary.

No borrower shall, without the approval of the Board of Administrators and of any other lender holding or sharing a lien on such borrower's properties, sell or dispose of the property, rights, franchises, permits or any other assets acquired and/or mortgaged under the provisions of this Act until all outstanding indebtedness to the NEA and any other such lender, including all interest owing thereon, shall have been repaid: *Provided*, That the NEA may by appropriate rule or regulation grant general permission to borrowers to dispose of incidental properties (excluding real property), rights, franchises, permits or other assets no longer deemed necessary or useful in conducting the borrower's operations.

No cooperative shall borrow money from any source without the Board of Administrators' prior approval: *Provided*, That the Board of Administrators may, by appropriate rule or regulation, grant general permission to cooperatives to secure short-term loans not requiring the encumbering of their real properties or of a substantial portion of their other properties or assets.

SECTION 12. *Staff.* – To enable the NEA to implement more effectively the provisions of this Act, the Board of Administrators shall have and provide for a technical staff and such other staffs or personnel as it may deem proper. The Administrator shall appoint the personnel of the NEA, subject to the approval of the Board of Administrators and the requirements of existing law. He shall, furthermore, have control and supervision over them.

SECTION 13. *Execution of Public Works Acts.* – The NEA shall execute all electrification projects that may be authorized in any *Public Works Acts*; and for this purpose it may call for assistance and cooperation consistently with section 5(e).

SECTION 14. *Administrative Expenses.* – The NEA's administrative expenses shall be appropriated annually by the Congress.

SECTION 15. *Conflict of Interest.* –

- (a) No member, officer, attorney, agent, or employee of the NEA shall in any manner, directly or indirectly, participate in the determination of any question affecting any association or corporation in which he is directly or indirectly interested or any person to whom he is related within the third degree of affinity or consanguinity. Any person violating the provisions of this subsection shall be removed from office and shall upon conviction be punished by a fine not to exceed ten thousand pesos or imprisonment not to exceed five years, or both.

- (b) No officer or employee of the NEA or any government official who may exercise executive or supervisory authority over the NEA, either directly or indirectly, for himself or as the representative or agent of others, shall become a guarantor, endorser, or surety for loans from the NEA to others, or in any manner be an obligor for money borrowed from the NEA. Any such officer or employee who violates the provisions of this subsection shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or imprisonment for not less than one year nor more than five years, or both.
- (c) No loan shall be granted by the NEA to any person related to any member of the Board of Administrators or to the Administrator within the third degree of consanguinity or affinity, or to any corporation, partnership, or company wherein any member of the Board of Administrators or the Administrator is a shareholder: *Provided*, That the foregoing prohibition shall not apply to a cooperative of which any member of the Board of Administrators or the Administrator or any such relative is a member. Violation by any member of the Board of Administrators or the Administrator of the provisions of this subsection is sufficient cause for his removal by the President of the Philippines; and the violator shall furthermore be punished as provided in subsection (b).
- (d) No fee, commission, gift, or charge of any kind shall be exacted, demanded, or paid for obtaining loans from the NEA. Any officer, employee or agent of the NEA or the Government exacting, demanding or receiving any fee, commission, gift or charge of any kind for service in obtaining a loan shall be punished by a fine of not less than one thousand nor more than three thousand pesos, or imprisonment for not less than one year nor more than three years, or both.
- (e) Any person who, for the purpose of obtaining, renewing, or increasing a loan or the extension of the period thereof, on his own or another's behalf, shall give any false information or cause through his intrigue or machination the existence and production of any false information with regard to the identity, situation, productivity or value of security, or with regard to a point which might affect the granting or denial of the loan, whether the latter has been consummated or not, and every officer or employee of the NEA who through connivance shall allow by action or omission such false information to pass unnoticed, thereby causing damage to the NEA or exposing the latter to the danger of suffering such damage, shall be punished by a fine of not less than the amount of the loan obtained or applied for nor more than three times such amount, or imprisonment for not less than three months nor more than three years, or both.
- (l) Any officer or employee of the NEA who violates, or causes or permits another person to violate, and (2) any other person who violates or aids or abets the violation of, any provision of this Act not specifically punishable in the preceding subsections shall be punished by a fine not exceeding two thousand pesos, or imprisonment not exceeding one year, or both.

SECTION 16. *Supervision over NEA; Power Development Council.* – The NEA shall be under the supervision of the Office of the President of the Philippines. All orders, rules and regulations promulgated, and all appointments made by the NEA as well as all transactions subject to the authority and jurisdiction of the NEA involving more than five hundred thousand pesos shall be subject to the approval of the Office of the President of the Philippines.

In order to achieve coordination and cooperation among different agencies and sectors having to do with electrification and power development, there is hereby created a Power Development Council whose Chairman shall be a person or official designated by the President of the Philippines, and its members shall be the manager of the NPC, the NEA Administrator, the Chairman of the NEC or a representative designated by him, the Chairman of the Presidential Economic Staff or a representative designated by him, a representative of electric cooperatives to be chosen by a national association of electric cooperatives, and a representative of the Philippine Electric Plant Owners Association to be designated by its board. The council shall meet at least once a month and shall adopt an integrated plan of electrification and power development, coordinate the activities and operations of all sectors involved in electrification, conduct relevant studies and researches, and recommend such policies and measures to the proper authorities and parties concerned as it may deem necessary to achieve the total electrification objective declared in this Act.

### CHAPTER III ELECTRIC COOPERATIVES

SECTION 17. *Organization and Purpose.*  
– Cooperative non-stock, non-profit membership corporations may be organized, and electric cooperative corporations heretofore formed or registered under the Philippines Non-Agricultural Co-operative Act may as hereinafter provided be converted, under this Act for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations.

SECTION 18. *Powers.* – A cooperative is hereby vested with all power necessary or convenient for the accomplishment of its corporate purpose and capable of

being delegated by the Congress; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. Such powers shall include, but not be limited to, the power:

- (a) To sue and be sued in its corporate name;
- (b) To have existence for a period of fifty years;
- (c) To adopt a corporate seal and alter the same;
- (d) To generate, manufacture, purchase, acquire, accumulate and transmit electric power and energy, and to distribute, sell, supply and dispose of electric energy to persons who are its members and to other persons not in excess of ten per centum of the number of its members: *Provided, however,* That a cooperative may furnish electric cold storage or processing plant service to non-members without limitation; and *Provided, further,* That a cooperative which acquires existing electric facilities may continue service from such facilities without requiring such persons to become members, but such persons may become members upon such terms as may be prescribed in the cooperative's by-laws;
- (e) To assist persons to whom service is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrically-powered appliances, equipment, fixtures and machinery for agricultural, commercial and industrial uses by the financing thereof or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electrically-powered appliances, equipment, fixtures and machinery;

- (f) To assist persons to whom service is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;
- (g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;
- (i) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidence of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues: *Provided*, That any borrowing from, or any encumbering of its properties as security in favor of, any lending sources other than the NEA shall require the prior approval of the NEA Administrator and his certification that such is in furtherance of the purposes and is consistent with the provisions of this Act, and that such borrowing and/or encumbering will not diminish the security of, or of the ability of the cooperative to repay, and then-outstanding indebtedness of the cooperative to the NEA or any other lending source below the level of such security and ability were such additional borrowing not being undertaken;
- (j) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways: *Provided*, That such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;
- (k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems;
- (l) To become a member of other cooperatives or corporations or to own stock therein, provided such cooperatives or corporations are engaged in a business or activities germane to or having a reasonable bearing on the business or activities of the cooperative, its members, its directors, or its employees;
- (m) To conduct its business and exercise its powers within or without the province or provinces in which it supplies service;
- (n) To adopt, amend and repeal by-laws;
- (o) To fix, maintain, implement and collect rates, fees, rents, tolls and other charges and terms and conditions for service: *Provided*, That by appropriate rules and regulations the NEA shall require that such shall be in furtherance of the purposes and in conformity with the provisions of this Act; and
- (p) To do and perform any other acts and things, and to have and exercise any

other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

SECTION 19. *Name.* – The name of a cooperative shall include the words “Electric” and “Cooperative”, and the abbreviation “Inc.”. The name of a cooperative organized under this Act shall be distinct from the name of any other cooperative already organized or converted under this Act. The foregoing requirement shall not apply to any cooperative which becomes subject to this Act by complying with the provisions of section 34.

SECTION 20. *Incorporators.* – Five or more persons, including cooperatives, may organize a cooperative in the manner hereinafter provided.

SECTION 21. *Articles of Incorporation.* – The articles of incorporation of a cooperative shall recite that they are executed pursuant to this Act and shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of the incorporators; and (d) the names and addresses of its original directors, who shall constitute the board until the first election of the board by the members; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators (or on their behalf, if they are cooperatives). It shall not be necessary to recite in the articles of incorporation the purpose for which the cooperative is organized or any of its corporate powers.

SECTION 22. *By-Laws.* – Unless reserved to the members in the articles of incorporation, the power to adopt and thereafter to amend or repeal by-laws shall vest in and be exercised by the board, the affirmative votes of a clear majority of all directors in office, after due notice to all directors, being requisite for such

purpose. The by-laws shall set forth the basic rights and duties of members and directors and may contain any other provisions for the regulation and management of the affairs of the cooperative not inconsistent with its articles of incorporation or this Act.

SECTION 23. *Members.* – Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect of membership.

The provisions of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefor and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws: *Provided*, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative. For this purpose, individual permission need not be obtained from the proper head of office: *Provided, however*, That this authority shall not be construed as a permit to the government officer or employee concerned to devote official time to the affairs of the cooperative.

SECTION 24. *Meetings of Members.* –

- (a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws.
- (b) Special meetings of the members may be called by the President, by the board, by any three directors or, unless a smaller number or percentage be prescribed



in the by-laws, by not less than 100 members or five *per centum* of all members, whichever shall be the lesser.

- (c) Except as otherwise provided in this Act and unless otherwise provided for in the by-laws, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten days nor more than twenty-five days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the Philippine mail with postage prepaid, addressed to the member at his address as it appears on the records of the cooperative.
- (d) Unless the by-laws prescribe the presence of a greater or lesser percentage or number of the members for such purpose, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members shall be five per centum of all members, present in person, and of a cooperative having more than 1,000 members shall be five per centum of all members or 100, whichever is lesser, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.
- (e) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of the members. Voting shall be non-cumulative and in person, but, if the by-laws so provide, may also be by mail or by proxy.

SECTION 25. *Waiver of Notice.* – Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall

attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates herein solely to object to the transaction of any business because the meeting has not been legally called or convened.

SECTION 26. *Board of Directors.* –

- (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Act, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.
- (b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except

as otherwise provided in this Act. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

- (c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.
- (d) A majority of the board of directors in office shall constitute a quorum.
- (e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Act or by its articles of incorporation or by-laws.

SECTION 27. *Districts.* – The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, the manner of changing such boundaries, and the manner in which such districts shall function.

SECTION 28. *Officers.* – The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board. When a person holding any such office ceases to be a director, he shall ipso facto cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

SECTION 29. *Amendment of Articles of Incorporation.* – A cooperative may amend

its articles of incorporation by complying with the following requirements: *Provided, however,* That a change of location of principal office may be effected in the manner set forth in section 30. The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment or an accurate summary thereof. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of the total votes cast thereof at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section in respect of the amendment set forth in such articles were duly complied with.

SECTION 30. *Change of Location of Principal Office.* – A cooperative may, upon authorization of its board or members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the place provided for in section 36.

SECTION 31. *Consolidation.* – Any two or more cooperatives (each of which is hereinafter designated a “consolidating cooperative”) may consolidate into a new cooperative (hereinafter designated the “new cooperative”), by complying with the following requirements:

- (a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed

articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation or an accurate summary thereof.

- (b) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each consolidating cooperative voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Act and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

SECTION 32. *Merger.* – Any one or more cooperatives (each of which is hereinafter designated a “merging cooperative”) may merge into another cooperative (hereinafter designated the “surviving cooperative”) by complying with the following requirements:

- (a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of each merging cooperative and of the surviving, cooperative, the notice of which shall have attached thereto a copy of the proposed articles of merger or an accurate summary thereof.
- (b) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each cooperative voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Act and shall state: (1) the name of each merging cooperative and the address of its principal office; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that each merging cooperative and the surviving cooperative agree to the merger; (4) the names and addresses of the directors of the surviving cooperative; and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperatives and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the

conduct of the business of the surviving cooperative. The president or vice-president of each cooperative executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

SECTION 33. *Effect of Consolidation or Merger.* –

- (a) In the case of a consolidation, the existence of the consolidating cooperative shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;
- (b) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;
- (c) The new or surviving cooperative shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperatives shall be substituted in its place; and

- (d) Neither the rights of creditors nor any liens upon the property of any such cooperatives shall be impaired by such consolidation or merger.

SECTION 34. *Conversion of Existing Corporations.* – Any corporation heretofore organized or registered under the *Philippine Non-Agricultural Co-operative Act* and supplying or having the corporate power to supply electric energy may convert itself into a cooperative under this Act by complying with the following requirements, and shall thereupon become subject to this Act with the same effect as if originally organized hereunder:

- (a) The proposition for the conversion of such corporation and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion or an accurate summary thereof.
- (b) If the proposition for the conversion and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by members at such meeting, and/or, if such corporation is a stock corporation or has both members and voting stockholders, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of such corporation represented at such meeting and voting thereon, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this Act and shall state: (1) the name of the corporation and the address of its principal office prior to its conversion

into a cooperative; (2) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this Act; (3) its name as a cooperative; (4) the address of the principal office of the cooperative; (5) the names and addresses of the directors of the cooperative, and (6) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

SECTION 35. *Dissolution.* – A cooperative may be dissolved in the following manner: The proposition to dissolve shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The members at any such meeting shall approve, by the affirmative vote of not less than a majority of all members of the cooperative, the proposition that the cooperative be dissolved. Upon such approval, a certificate of election to dissolve (hereinafter designated the “certificate”) shall be executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved. Also, an affidavit, made by its president or vice-president executing the certificate, shall state that the statements in the certificate are true. Upon the filing of the certificate and affidavit as provided for in section 36, the cooperative shall cease to carry on its business except

to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed. The board shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week for two successive weeks in a newspaper of general circulation in the territory in which the principal office of the cooperative is located. The board shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, and do all other things required to wind up its business; and, after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, shall distribute any remaining sums and/or unliquidated assets, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage; second, to members for the pro rata repayment of membership fees; and third, to patrons for the amounts of any outstanding contributions in aid of construction they have made. Any sums and/or unliquidated assets then remaining shall be distributed in such manner as provided in the cooperative’s articles of incorporation or by-laws, which may provide for distribution of such sums or assets on a patronage basis to persons who were members in one or more prior years or for transfer thereof to a new cooperative to succeed the one being dissolved. The board shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed;

(4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that provision to the extent possible has been made therefor; and (6) that the provisions of this section have been duly complied with. The president or vice-president executing the articles of dissolution shall make and annex thereto an affidavit stating that the statements made therein are true.

**SECTION 36. *Filing of Articles and Certificates.***

– Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution and certificates of changes in the location of principal offices and of elections to dissolve, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this Act, shall be presented to the Administrator for filing in the records of his office. If he shall find that such conform to the requirements of this Act, he shall so certify and shall file such in the records of his office. Upon such certification and filing, the incorporation, amendment, consolidation, merger, conversion, dissolution or certificate provided for therein shall be in effect.

**SECTION 37. *Non-profit, Non-discriminatory, Area Coverage Operation and Service.*** – A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay, or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis: *Provided*, That, for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the

financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction, such facilities extension deposit, such guarantee of minimum usage for a minimum term, or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no difference in standard rates for use of service shall be imposed for such purpose.

The by-laws of a cooperative or its contracts with members and patrons shall contain such reasonable terms and conditions respecting membership, the furnishing of service and the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit, cooperative character and to assure compliance with this section. No *bona fide* applicant for membership or non-member patronage who is able and willing to satisfy and abide by all such terms and conditions shall be denied arbitrarily, capriciously or without good cause.

**SECTION 38. *Disposition of Property.*** –

- (a) The board of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or a deed of trust, on the pledging or encumbering otherwise, of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the board shall determine, to secure any borrowing by or indebtedness of the cooperative.
- (b) A cooperative may not otherwise sell, lease or except by consolidation or merger, otherwise dispose of its property (other than merchandise and property which shall represent not in excess of ten per centum of the value of the cooperative's total assets, or which in the judgment of the board are not necessary

or useful in operating the cooperative) unless such sale, lease or, except in the case of consolidation or merger, other disposition is (1) authorized by the affirmative vote of not less than a majority of all the members of the cooperative and (2) consented to by the NEA and any other lending source which then holds a lien on any of the cooperative's properties.

SECTION 39. *Non-liability of Members for Debts of Cooperative.* – No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execution therefor.

SECTION 40. *Limitation of Actions.* – No action or suit may be brought against a cooperative, or against any agent, servant or employee thereof, by reason of the maintenance of electric transmission or distribution lines, or any related equipment, facilities or machinery, on any real property after the expiration of a period of five years of continuous maintenance of such lines or related equipment facilities or machinery.

SECTION 41. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation; Protection of Franchise.* – Pursuant to the national policy declared in section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Act, a cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever first occurs, shall be exempt from the payment (A) of all National Government, local government and

municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and any fees, charges or costs involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in section 31, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Act: *Provided,* That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations provided for in this Act.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which, without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchise to a cooperative.

(c) No franchise for service shall be granted to any other person within any area or portion for which a cooperative holds a franchise unless and except to the extent that (1) the cooperative's board consents thereto by resolution duly adopted or (2) the Public Service Commission determines that the cooperative is unable within a reasonable time, or is unwilling, to supply service therein in accordance

with the provisions of section 37.

SECTION 42. *Regulation by the Public Service Commission and Securities and Exchange Commission.* – Pursuant to the national policy declaration in section 2, the Congress hereby establishes that:

- (a) To the extent that the Public Service Commission now is or may hereafter be authorized and empowered to do so with respect to other electric public services, the Commission is hereby authorized and empowered:
  - (1) To grant, condition, restrict or cancel a cooperative's franchise, or to determine whether a cooperative is qualified to receive a franchise;
  - (2) To require a cooperative to extend or improve service upon the Commission's determination that such should be done in furtherance of the public convenience and necessity and that such may reasonably be done consistently with the purposes and provisions of this Act;
  - (3) To require a cooperative to cease any discriminatory practice which the Commission finds to be in effect in violation of section 37; and, in connection with such authority, to require a cooperative to file with the Commission for information purposes, and to make accessible to any person upon request therefor, copies of all rates, charges, contract forms, fee or deposit schedules, by-laws, rules and regulations; and
  - (4) To require a cooperative to interconnect its facilities with, and through such interconnection to sell or exchange electric energy to or with, other electric public services or the National Power Corporation if the National Power Corporation so requests or consents thereto:

Other than an order to require information filings, as provided in (3) of this subsection, the Commission shall issue no order in the exercise of the foregoing powers without affording the cooperative and any other interested person who requests it an opportunity to be heard. Except as provided in this subsection, a cooperative shall be exempt from regulation or control by the Public Service Commission.

- (b) The provisions of the *Securities Act* shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Act shall not apply to the issuance of membership certificates or any other evidence of member or patron interest by a cooperative.

#### **CHAPTER IV TRANSITORY PROVISIONS**

SECTION 43. *The Electrification Administration.* – Republic Act Numbered Twenty seven hundred seventeen is hereby repealed and the Electrification Administration created under it is hereby dissolved in the manner hereinafter provided:

- (a) The incumbent Administrator and Two Deputy Administrators of the Electrification Administration shall continue to serve the balance of the unserved portion of their respective terms of office;
- (b) Any reference to the Electrification Administration in any existing law or in any executive order, administrative order or proclamation of the President shall, with respect to any duty or function assumed by the NEA created in this Act, be deemed hereafter to have reference to the NEA;
- (c) The properties, assets, rights, chooses in action, obligations, liabilities, records



and contracts of the Electrification Administration are hereby transferred to, and are vested in, and assumed by the NEA;

- (d) The personnel of the Electrification Administration who are occupying civil service positions shall be absorbed and transferred to the latter without demotion in rank nor reduction in salary: *Provided*, That those employees who shall be separated from the service and those not absorbed by the NEA shall be given by the said office at least one month gratuity for every year of service and, or other benefits in accordance with existing laws and regulations chargeable to the corresponding fund and, or any available fund under paragraph (a), section seven of this Act; and
- (e) All on-going projects and/or approved loans under the Electrification Administration shall be reviewed and,

insofar as found to be economically feasible in accordance with sound management engineering and technological standards, shall be continued and completed on a priority basis: *Provided*, that steps shall be taken to place them on an area coverage basis.

SECTION 44. *Separability of Provisions.* – If any provisions of this Act, or the application of such provision to any person or circumstance, is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SECTION 45. *Effect on Other Acts.* – All Acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

SECTION 46. *Effectivity.* – This Act shall take effect upon its approval.

Approved, July 28, 1969

## PRESIDENTIAL DECREE NO. 269

CREATING THE “NATIONAL ELECTRIFICATION ADMINISTRATION” AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES

---

**WHEREAS**, it is the desire of the government to effect changes and reforms in the social, economic, and political structure of our society;

**WHEREAS**, detailed studies have clearly emphasized the very close correlation between consumption of energy and gross national product. Electric power, wherever introduced, stimulates the growth of industry and the economy in general;

**WHEREAS**, electrification of the entire country, one of the primary concerns of the government in order to bring about the desired changes and reforms, can be hastened by rationalizing the distribution of electricity;

**WHEREAS**, rationalization, which implies the adoption of all measures necessary to obtain the maximum benefit at the minimum expenses, can be achieved by:

- (1) Establishing island grids and integrating power generating systems.
- (2) Consolidating electric distribution franchise systems. The existence of small franchise system impede the progress of total electrification, as such small and isolated systems are antithetical to the economies of scale.
- (3) Implementing the area coverage concept, which will allow the construction of lines to thinly settled areas which are most costly to electrify, provided that the losses from these lines can be reasonably absorbed by the more profitable lines.

**WHEREAS**, under Republic Act No. 6038, dated August 4, 1969, Presidential Decree No. 40 and Letter of Instruction No. 38, dated November 7, 1972, the National Electrification Administration was given certain powers, duties, and functions to attain total electrification on an area coverage basis; to set up cooperatives for the distribution of power; and to determine privately-owned public utilities which should be permitted to remain in operation;

**WHEREAS**, to attain total electrification in the most effective and efficient manner, there is a need to further strengthen and make more flexible the organizational structure of the National Electrification Administration by converting it into a corporation, wholly-owned and controlled by the government, possessed with borrowing authority and corporate powers;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, do hereby repeal Republic Act No. 6038 and do hereby decree, order and make as part of

the law of the land the *Charter of the National Electrification Administration*, which reads as follows:

## **CHAPTER I Policy and Definitions**

SECTION 1. *Title.* – This Decree shall be referred to as the “National Electrification Administration Decree.”

SECTION 2. *Declaration of National Policy.* – The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the state to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing to pursue diligently this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and Congress, having, by the enactment of this Decree, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject to minimal regulation by other administrative agencies.

Area coverage electrification cannot be achieved unless service to the more thinly settled areas and therefore more costly to electrify is combined with service to the most densely settled areas and therefore less costly to electrify. Every public service

entity should hereafter cooperate in a national program of electrification on an area coverage basis, or else surrender its franchise in favor of those public service entities which will. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchised electric service areas be revised and made more effective, as herein provided. It is therefore hereby declared to be the policy of the State that franchises for electric service areas shall hereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveillance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.

SECTION 3. *Definitions.* – As used in this Decree, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) “NEA” shall mean the National Electrification Administration, “Board of Administrators” shall mean the Board of Administrators, and “Administrator” shall mean the Administrator, all as provided for in this Decree.
- (b) “Cooperative” shall mean a corporation organized under Republic Act No. 6038 or this Decree or cooperative supplying or empowered to supply service which has heretofore been organized under the *Philippine Non-Agricultural Cooperative Act*, whether covered under this Decree or not.
- (c) “Public service entities” shall mean (1) a cooperative, (2) the NPC, and (3) local governments and privately-owned public service entities in operation which furnish and are empowered to furnish retail electric service.
- (d) “Person” shall mean any natural person, firm, association, cooperative,

corporation, business trust, partnership, the National Government or any political subdivision, agency or instrumentally thereof.

- (e) “Service” shall mean electric service, either at wholesale or retail, including the finishing of any auxiliary or related service.
- (f) “Dependable and adequate service” shall mean service that, consistent with normal standards and levels of service based upon good utility management and operating practices, is sufficient in quantity, having regard for the demands for service currently existing and reasonably anticipated within the foreseeable future, and that is accessible on a constant and continuous basis except for outages occasioned by the need for normal repair, maintenance, construction or renovation work or by acts beyond the reasonable ability of the public service entity to prevent or control.
- (g) “Area” shall mean (1) the geographic area franchised to a public service entity or (2) any lesser geographic area for the furnishing of retail service to which a public service entity pursuant to this Decree borrows, or may apply to borrow, funds from the NEA, or may otherwise secure loans with the approval of the NEA, to finance the acquisition or construction and operation, maintenance or renovation of service facilities.
- (h) “Area coverage” shall mean dependable and adequate service that, on the basis of reasonable and standard extension and service policies, rates, charges and other terms and conditions, will be or is being made available to all persons within the affected area as above defined who request such service and are able and willing to abide by and comply with all such reasonable and standard

terms and conditions, regardless of the relative location of such persons within the affected area or of their proximity to existing or proposed service facilities: *Provided*, That the financial feasibility of the public service entity's entire operation is not thereby impaired.

- (i) "Interest rate per centum per annum" shall mean an interest rate that is accrued solely upon the unpaid balance of any loan principal which has actually been advanced to a borrower and upon any interest payment which has become due or been deferred and has not been paid by the borrower; computed on an annual basis.
- (j) "Loan" shall mean a loan the total principal amount of which, as and when required for application to the purposes thereof, is, at the time of the making thereof, assured from funds that are or will become available therefor.
- (k) "NEDA" shall mean National Economic and Development Authority or any successor or instrumentality that may hereafter be established to perform the same or substantially similar function; "NPC" shall mean National Power Corporation; and "NEDA-FS" shall mean National Economic and Development Authority-Foreign Source.
- (l) "Board of Power and Waterworks" shall mean Board of Power and Waterworks or any successor board, agency or instrumentality that may hereafter be established to perform the same or substantially similar functions.
- (m) "Franchise" shall mean the privilege extended to a person to operate an electric system for service to the public at retail within a described geographic area, whether such privilege had been granted by the Congress, by a municipal, city or provincial government or, as herein provided, by the NEA.

- (n) "Non-profit" shall mean that a cooperative shall not engage in business for the purpose of making a profit for itself or its patrons, but it shall not mean that a cooperative may not account on a patronage basis to its patrons for any receipts in excess of its expenses in relation to its operations in serving such patrons or in relation to investment of any of its surplus funds pending their use by the cooperative or their refund to patrons; nor shall it mean that such excess receipts may not be refunded to its patrons, or may not be converted into patron- furnished capital subject to later redemption and retirement by the cooperative.
- (o) "Board" shall mean the board of directors of a cooperative.
- (p) "Household" shall mean a non-seasonal dwelling capable of receiving service safely, including apartments and other dwelling combinations.
- (q) "Congress" shall mean the President during his exercise of Martial Law, or the National Assembly under the new Constitution of 1973, whichever is the case at any given time.
- (r) "President" shall mean the President of the Philippines during the existence of Martial Law, or the Prime Minister when the National Assembly comes into existence.

## CHAPTER II

### The National Electrification Administration

SECTION 4. *NEA Authorities, Powers and Directives.* – The NEA is hereby authorized, empowered and directed to promote, encourage and assist public service entities, particularly cooperatives, to the end of achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible; and for

such purpose it is hereby, without limiting the generality of the foregoing and in addition to other authorizations, powers and directives established by this Decree, specifically authorized, empowered and directed:

- (a) To have a continuous succession under its corporate name until otherwise provided by law;
- (b) To prescribe and thereafter to amend and repeal its by-laws not inconsistent with this Decree;
- (c) To adopt and use a seal and alter it at its pleasure;
- (d) To sue and to be sued in any court: *Provided*, That NEA shall, unless it consents otherwise, be immune to suits for acts *ex delicti*;
- (e) To make contract of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;
- (f) To make loans to public service entities, with preference to cooperatives, for the construction or acquisition, operation and maintenance of generation, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and thereafter to make loans for the restoration, improvement or enlargement of such facilities; *Provided*, That the public service entity supplying for a loan, if neither a cooperative nor a local government, must be in operation at the time of application;
- (g) To promote, encourage and assist public service entities and government agencies and corporations having related functions and purposes, with preference to cooperatives, in planning, developing, coordinating, establishing, operating,

maintaining, repairing and renovating facilities and systems to supply area coverage service, and for such purpose to furnish, to the extent possible and without change therefor, technical and professional assistance and guidance, information, data and the results of any investigation, study, or receipt conducted or made by the NEA;

- (h) To approve or disapprove any loan from other lenders to public service entities which at the time are borrowers from NEA under sub-paragraphs (f) or (i) of this section, and thereafter, pursuant to Section 10 (b) to disapprove advances of loans from other lenders;
- (i) To make loans for the purpose of financing the wiring of premises of persons served or to be served as a result of loans made under sub-paragraph (f) of this Section, and for the acquisition and installation by such persons of electrically-powered appliances, equipment, fixtures and machinery of all kinds for residential, recreational, commercial, agricultural and industrial uses, such loans to be made directly (1) to public service entities which have received loans under sub-paragraph (f) of this section, which entities shall in turn relend such funds to persons served or to be served by them, or (2) to any persons served or to be served by public service entities which have received loans under sub-paragraph (f) of this section: *Provided*, That at no time shall the total loans made under this sub-paragraph (i) to a public service entity and/or to persons served or to be served by such entity exceed twenty-five (25%) per centum of the outstanding loans to such entity made under sub-paragraph (f) of this section;
- (j) To so cooperate, coordinate and exchange such information, studies and reports with, and to seek such cooperation and coordination from, other departments,

agencies and instrumentalities of the National Government, including the NPC, as will most effectively conduce to the achievement of the purposes of this Decree;

- (k) To borrow funds from any source, private or government, foreign or domestic, and, not inconsistently with Section 8, to issue bonds or other evidences of indebtedness therefor and to secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;
- (l) To receive from cooperatives all articles of incorporation, amendments, consolidation, merger, conversion and dissolution, and all certificates of changes in the location of principal offices and of elections to dissolve, and, upon determining that such are in conformity with this Decree, to certify the same, to file them in the records of the NEA, and to maintain a registry of such filings the provisions of Act No. 1459, as amended, to the contrary notwithstanding;
- (m) To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA, to be exercised in the manner provided by law for the institution and completion of expropriation proceedings by the National and local governments,) real and physical properties, together with all appurtenant rights, easements, licenses and privileges, whether or not the same be already devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA's determination that such acquisition is necessary to accomplish the purposes of this Decree and, if such properties be already devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; *Provided*, That the power herein granted shall be exercised

by the NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis, which entity or entities shall then be, or in connection with the acquisition shall become, borrowers from the NEA under sub-paragraph (f) of this section; and *Provided further*, That the costs of such acquisition, including the cost of any eminent domain proceedings, shall be borne, either directly or by reimbursement to the NEA, whichever the NEA shall elect, by the public service entity or entities on whose behalf the acquisition is undertaken; and otherwise to acquire, improve, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out, the purposes for which NEA was created;

- (n) At least annually, not later than June 30th, to report to the President and when the same comes into existence, the Prime Minister and the National Assembly, on the status of electrification of the Philippines, including a comprehensive reporting of loans made, loan funds advanced, loans secured from other sources and the advances thereof, the names and locations of the borrowers, the number of services contemplated by such loans, the number actually receiving service as a result of such loans, the number of electrified and the remaining number of unelectrified households throughout the Nation, the amounts of usage by consumers, loan and other activities programmed for the ensuing year, and all such other information and data as will accurately reveal the progress being made toward the achievement of the purposes of this Decree; and to publish such report for dissemination to and use by other interested departments,

agencies and instrumentalities of the National Government and by borrowers under this Decree; and

- (o) To exercise such powers and do such things as may be necessary to carry out the business and purposes for which the NEA was established, or which from time to time may be declared by the Board of Administrators to be necessary, useful, incidental or auxiliary to accomplish such purposes; and generally, to exercise all the powers of a corporation under the *Corporation Law* insofar as they are not inconsistent with the provisions of this Decree.

SECTION 5. *National Electrification Administration; Board of Administrators; Administrator.* –

- (a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and exercised by a Board of Administrators, which shall be composed of a Chairman and four (4) members, one of whom shall be the Administrator as *ex-officio* member. The Chairman and the three other members shall be appointed by the President of the Philippines to serve for a term of six years. *Provided*, That the terms of the first appointees shall be six years for the Chairman and one member and three years for the two other members, respectively, and that the term of the *ex-officio* member shall be co-terminus with his term as the Administrator. All vacancies, except through expiration of the terms, shall be filled for the unexpired term only. The Chairman and every member of the Board of Administrators shall be entitled to a per diem of not more than three hundred pesos for each meeting actually attended by them; *Provided*, That the

total of such per diems shall not exceed one thousand five hundred pesos per month per member.

The Board of Administrators shall meet regularly at least twice a month and as often as the exigencies of the agency's affairs demand.

The presence of at least three members shall constitute a quorum which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present shall be necessary for the approval of any resolution, decision or order, except when a greater vote is required as sometimes hereinafter provided. In the absence of the Chairman at a Board meeting duly called, the Administrator as *ex-officio* member shall preside.

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

- (1) To implement the provisions and purposes of this Decree;
- (2) To formulate and adopt policies and plans, and to promulgate rules and regulations, for the management, operation and conduct of the business of the NEA;
- (3) To adopt and, as may be necessary from time to time, to amend annual budgets for the NEA's borrowing and lending programs and for the agency's administration; *Provided*, That copies of such budgets shall be submitted to the President or the appropriate committee of and as determined by, the National Assembly, when it comes into existence, within fifteen (15) days from the transmission thereof to the NEDA; and *Provided, further*, That the administrative budget and

any amendments thereto shall be subject to the approval of NEDA;

- (4) To fix the compensation of the Administrator and of the Deputy Administrators, subject to the approval of the President of the Philippines; and
  - (5) To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator to organize or reorganize NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties.
- (b) The management of NEA shall be vested in the Administrator, who shall be a person of known integrity, competence and experience in technical and executive fields related to the purposes of this Decree. He shall be appointed by the President of the Philippines and shall not be removed except for cause.

The Administrator shall have the following powers and duties:

- (1) To execute and administer the policies, plans and program, and the rules and regulations, approved or promulgated by the Board of Administrators;
- (2) To submit for the consideration of the Board of Administrators such policies, plans and programs as he deems necessary to carry out the provisions and purposes of this Decree;
- (3) To direct and supervise the operation and internal administration of the NEA and, for this purpose, to delegate some or any of his powers and duties to subordinate officials of the NEA;

- (4) Subject to the guidelines and policies established by the Board of Administrators, to appoint and fix the number and compensation of subordinate officials and employees of the NEA: *Provided, however,* That the provisions of the *Civil Service Law* and *Position Classification Law* shall not apply to the appointment and compensation of any such subordinate official or employee;
- (5) For cause, to remove, suspend, or otherwise discipline any subordinate official or employee;
- (6) To prepare an annual report on the activities of the NEA at the close of each fiscal year and to submit a copy thereof to the President of the Philippines and when it comes into existence, the Prime Minister and the appropriate committee of, and as determined by, the National Assembly; and
- (7) To exercise such other powers and duties as may be vested in him by the Board of Administrators.

In case of absence or disability of the Administrator, he shall designate any of the Deputy Administrators who shall act in his place.

- (c) The Auditor General shall be *ex-officio* Auditor of the NEA. The provisions of Section 584 of the *Revised Administrative Code*, as amended by Republic Acts Numbered 2266 and 2716, shall apply to the Office of the Representative of the Auditor General in the NEA.

SECTION 6. *Capital Stock.* – The authorized capital stock of NEA is One Billion Pesos (P 1B) divided into ten (10) million shares having a par value of One Hundred (P 100.00) Pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise



given as security for the payment of any obligation. The sum of fifty million pesos (P 50M) of the capital stock has been subscribed and paid wholly by the government of the Philippines in accordance with the provisions of Republic Act Numbered Twenty-seven hundred seventeen, and Republic Act Numbered Sixty hundred thirty-eight.

The remaining Nine Hundred Fifty Million pesos (P 950 M) shall be wholly subscribed by the government of the Philippines and shall be paid as follows:

- (a) The sum of One Hundred Ninety Five Million Pesos (P195 M) worth of goods and services from Japanese Reparations for the eighteenth, nineteenth and twentieth year schedule, which is hereby allocated to NEA;
- (b) The sum of Ten Million Pesos (P 10 M) for the fiscal year 1973 and the same amount each year for the next two fiscal years making a total sum of thirty million pesos (P 30 M) representing proceeds of the sale of reparation goods, which are hereby allocated to NEA;
- (c) The sum of Fifty Three Million Five Hundred Thousand Pesos (P53.5 M) for the fiscal year 1973 and the same amount each year for the next nine (9) fiscal years from the general revenue, which are hereby appropriated;
- (d) The sum of One Hundred Thirty Million Pesos (P130 M) representing fund or physical assets which NEDA-FS may make available to the NEA for loan purposes;
- (e) The sum of Sixty Million Pesos (P60 M) representing proceeds corresponding to the share of the National Government in all franchise taxes paid by electric service entities; and
- (f) Such sums as may be appropriated and/or allocated by the President or the National Assembly, when it comes

into existence, from time to time as the financial needs of the NEA shall require until the authorized capital stock is fully paid-up.

SECTION 7. *Loan Standards.* – In making a loan authorized in Section 4, the Board of Administrators is hereby authorized, empowered and directed:

- (a) Before making such loan, to determine and certify that (1) the project or projects being financed thereby are financially feasible for the purpose of, and will result in, area coverage in the area or areas to be affected thereby; (2) funds are or will be available for the total advance of such loans to the borrower on the schedule contemplated by the loan agreement; and (3) in the NEA's judgment and security for such loan is reasonably adequate and the principal of and interest upon such loan will be repaid on schedule and within the time agreed;
- (b) To require that such loan be self-liquidating within a term to be fixed by the NEA;
- (c) To impose upon the loan principal an interest charge to be fixed by the NEA;
- (d) To fix the schedule for repayment of the principal of and the interest upon such loan in installments recurring not more than every quarter, which installments may be in unequal amounts and larger in the later years of the loan term than in the earlier years;
- (e) To require in the loan agreement that the borrower's rates, charges, rules and regulations, policies and all other terms and conditions affecting its extension and furnishing of service shall be such as to assure achievement of the loan purposes, and that the same shall be filed with and for such purpose approved by the Board of Administrators before being put into effect or charged by the borrower; and

- (f) Subject to the foregoing, to establish and require compliance with such procedures, rules and regulations as the Board of Administrators may determine to be necessary or appropriate to assure that the purposes of such loan will be timely achieved and that the loan agreement and the provisions of this Decree will be complied with.

SECTION 8. *Contracting Indebtedness: Conditions, Privileges, Exemptions, Sinking Fund, Guarantees.* – Whenever the Board of Administrators determines that to accomplish the purposes of Chapter II of this Decree it is necessary to contract indebtedness, it shall by a resolution, adopted by the affirmative votes, of at least three members, to declare and authorize the NEA's execution or issuance of, and establish the terms and conditions to be contained in, such bonds, loan agreements or other evidences of indebtedness necessary therefor. Such resolution shall become valid and effective upon approval by the President of the Philippines upon recommendation of the Secretary of Finance.

- (a) With respect to domestic indebtedness to be incurred by the NEA, the terms and conditions to be contained in such bonds or other evidences of indebtedness, and other conditions, privileges, exemptions and guarantees attaching thereto, shall include the following:

- (1) Such bonds or other evidences of indebtedness (a) shall be in registered form and transferable at the Central Bank of the Philippines; (b) shall not be sold at less than par; (c) shall be payable ten years or more from date of issue, as may be determined by the Secretary of Finance before their issuance, but shall be redeemable, upon the election of the Board of Administrators, after five years from such date of issue; and (d) shall bear interest at an annual rate to be determined before their issuance by

the Secretary of Finance. The interest may be payable quarterly, semi-annually or annually, as determined by the Secretary of Finance in consultation with the Monetary Board of the Central Bank of the Philippines before date of issuance, and both the principal and interest shall be payable in legal tender of the Philippines.

- (2) The bonds or other evidences of indebtedness shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division, political subdivision thereof, which facts shall be stated upon their face; and they shall be receivable as security in any transaction with the National Government or any of its branches, subdivisions, instrumentalities and its owned or controlled corporations in which a security is required.
- (3) The sinking fund shall be established by the National Electrification Administration in such manner that the total annual contributions thereto, accrued at such rate of interest as may be determined by the Secretary of Finance in consultation with the Monetary Board, shall be sufficient to redeem at maturity the bonds issued under this subsection. The sinking fund shall be under the custody of the Central Bank of the Philippines, which shall invest the same, subject to the approval of the Board of Administrators and the Secretary of Finance in consultation with the Monetary Board: *Provided*, That the proceeds thereof shall accrue to the NEA.
- (4) The Republic of the Philippines hereby guarantees the payment by the NEA of both the principal and the interest of the bonds or other

evidences of indebtedness, and shall pay such principal and interest in case the NEA fails to do so; and there are hereby appropriated out of the general funds in the National Treasury not otherwise appropriated the sums necessary to make the payments so guaranteed; *Provided*, That the sums so paid by the Republic of the Philippines shall be refunded by the NEA; and *Provided, further*, That the NEA, to assure such refunding, shall establish such reserves or sinking funds and comply with such other restrictions and conditions as the Secretary of Finance may prescribe and establish for that purpose.

- (b) With respect to foreign indebtedness to be incurred by the NEA, such may be contracted, in the form of loans, credits, convertible foreign currencies, or other forms of indebtedness, from foreign governments or any international financial institution or fund source, including foreign private lenders. The total outstanding amount of such indebtedness, exclusive of interest, shall not exceed five hundred million United States dollars (U.S. \$ 500 M) or the equivalent thereof in other currencies. The President of the Philippines, by himself or through his duly authorized representative, is hereby authorized to negotiate and to so contract with foreign governments or any international financial institution or fund source in the name and on behalf of the NEA; and is further authorized to guarantee, absolutely and unconditionally, as primary obligor and not merely as a surety, in the name and on behalf of the Republic of the Philippines, the repayment of any indebtedness thereby contracted and the payment thereon of any due interest charge, up to the limited amount authorized by the foregoing, which shall be over and above the amounts which

the President is authorized to guarantee under R.A. 6142, and also to guarantee the performance of all or any of the obligations undertaken by the NEA in the territory of the Republic of the Philippines pursuant to loan agreements entered into pursuant to this sub-paragraph (b). Any indebtedness contracted under this sub-paragraph (b) and the payment of the principal thereof and of any interest or other charges thereon, as well as the importation of machinery, equipment, materials, supplies and service by the NEA, paid from the proceeds of any such contracted indebtedness, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof.

SECTION 9. *Authority to Extend Loans and Release or Subordinate Securities.* – Whenever in its judgments such is necessary or desirable to achieve the purposes of this Decree, and particularly if such is necessary to make or keep a project operationally viable, the Board of Administrators is hereby authorized and empowered (a) by agreement with the borrower, to extend the time of payment of principal or interest, or both, beyond the loan agreement term of any loan made by the NEA under this Decree, or to defer, for not in excess of seven years, the time when the repayment schedule for principal or interest, or both, shall begin, or to reschedule payments of principal or interest, or both, or when more of the foregoing is sufficient, to compromise any amount owing by a borrower to the NEA subject to provision of existing laws; and (b) upon the NEA's determination that such is necessary or desirable for the purpose of enabling a borrower to accomplish the purposes for which it has already received an NEA loan and that such will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower below the

level of such security and ability were additional borrowings from another lender not undertaken, to release any after-acquired property clause contained in any lien the NEA holds on a borrower's properties to, or to share any such lien on a co-equal basis in proportion to their respective loans with, or to subordinate any such lien in favor of, any other lender of funds to a public service entity or to the NEA for relending to public service entities for the purposes for which loans are authorized under this Decree.

SECTION 10. *Enforcement Powers.* – If any public service entity which has borrowed funds from the NEA, or from any other lender with the NEA's lawfully required prior approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of the loan agreement or of any rule or regulation promulgated by the NEA in administering the provisions of this Decree, the Board of Administrators is hereby authorized and empowered in its discretion to do any or any combination of the following:

- (a) Refuse to make, or give my lawfully required approval to, any new loan to the borrower;
- (b) Withhold without limitation the NEA's advancement, or withhold its approval for any other lender with respect to which the NEA has such approving power to make advancement, of funds pursuant to any loan already made to the borrower;
- (c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;
- (d) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA, may, subject to any superior or co-equal rights in such lien held by any other lender; (1) bid for and purchase or otherwise acquire

such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA shall, within five years after acquiring such properties in foreclosure proceedings, sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or

- (e) Take any other remedial measure for which the loan agreements may provide.

In addition to the foregoing, the Board of Administrators may, at its own instance and in the name of the NEA, petition any court having jurisdiction for such purpose or any administrative agency possessing regulatory powers for such purpose (including the Board of Power and Waterworks) to issue such order and afford such lawful relief as may be necessary.

No borrower shall, without the approval of the Board of Administrators and of any other lender holding or sharing a lien on such borrower's properties, sell or dispose of the property, rights, franchises, permits or any other assets acquired and/or mortgaged pursuant to the provisions of this Decree until all outstanding indebtedness to the NEA and any other such lender, including all interest owing thereon, shall have been repaid: *Provided*, That the NEA may by appropriate rule or regulation grant general permission to borrowers to dispose of incidental properties (excluding real property), rights, franchises,

permits or other assets no longer deemed necessary or useful in conducting the borrower's operations.

No cooperative shall borrow money from any source without the Board of Administrator's prior approval: *Provided*, That the Board of Administrators may, by appropriate rule or regulation, grant general permission to cooperatives to secure short-term loans not requiring the encumbering of their real properties or of a substantial portion of their other properties or assets.

SECTION 11. *Execution of Public Works Acts.*  
– The NEA shall execute all electrification projects that may be authorized in any *Public Works Acts*; and for this purpose it may call for assistance and cooperation consistently with Section 4 (j).

SECTION 12. *Conflict of Interest.* –

- (a) No member, officer, attorney, agent or employee of the NEA shall in any manner, directly or indirectly, participate in the determination of any question affecting any public service entity or other entity in which he is directly or indirectly interested or any person to whom he is related within the third degree of affinity or consanguinity. Any person violating the provisions of this subsection shall be removed from office and shall upon conviction be punished by a fine not to exceed Ten Thousand (P 10,000.00) Pesos or imprisonment not to exceed five years, or both.
- (b) No officer or employee of the NEA or any government official who may exercise executive or supervisory, authority over the NEA, either directly or indirectly, for himself or as the representative or agent of others, shall become a guarantor, endorser, surety for loans from the NEA to others, or in any manner be an obligor for money borrowed from the NEA. Any such officer or employee who violates

the provisions of this subsection shall be punished by a fine of not less than One Thousand Pesos (P 1,000.00) nor more than Five Thousand (P 5,000.00) Pesos, or imprisonment for not less than one year nor more than five years, or both.

- (c) No loan shall be granted by the NEA to any person related to any member of the Board of Administrators or to the Administrator within the third degree of consanguinity or affinity, or to any corporation, partnership, or company wherein any member of the Board of Administrators or the Administrator is a shareholder: *Provided*, That the foregoing prohibition shall not apply to a cooperative of which any member of the Board of Administrators or the Administrator or any such relative is a member. Violation by any member of the Board of Administrators or the Administrator of the provisions of this subsection is sufficient cause for this removal by the President of the Philippines; and the violator shall furthermore be punished as provided in subsection (b).
- (d) No fee, commission, gift, or charge of any kind shall be exacted, demanded, or paid for obtaining loans from the NEA. Any officer, employee or agent of the NEA or the government exacting, demanding or receiving any fee, commission, gift or charge of any kind for service in obtaining a loan shall be punished by a fine of not less than one thousand nor more than three thousand pesos, or imprisonment for not less than one year nor more than three years, or both.
- (e) Any person who, for the purpose of obtaining, renewing, or increasing a loan or the extension of the period thereof, on his own or another's behalf, shall give any false information or cause through his intrigue or machination the existence and production of any false information

with regard to the identity, situation, productivity or value of security, or with regard to a point which might affect the granting or denial of the loan, whether the latter has been consummated or not, and any officer or employee of the NEA who through connivance shall allow by action or omission such false information to pass unnoticed, thereby causing damage to the NEA or exposing the latter to the danger of suffering such damage, shall be punished by a fine of not less than the amount of the loan obtained or applied for nor more than three times such amount, or imprisonment for not less than three months nor more than three years, or both.

- (f) Any officer or employee of the NEA who violates, or causes or permits another person to violate, and any other person who violates or aids or abets the violation of, any provision of this Decree not specifically punishable in the preceding subsections shall be punished by a fine not exceeding Two Thousand (P 2,000.00) Pesos, or imprisonment not exceeding one year, or both.

**SECTION 13. *Supervision over NEA; Power Development Council.*** – The NEA shall be under the supervision of the Office of the President of the Philippines. All orders, rules and regulations promulgated, and all appointments made by the NEA as well as transactions subject to the authority and jurisdiction of the NEA involving more than Five Hundred Thousand (P 500,000.00) Pesos shall be subject to the approval of the Office of the President of the Philippines.

In order to achieve coordination and cooperation among different agencies and sectors having to do with electrification and power development, there is hereby created a Power Development Council whose Chairman shall be a person or official designated by the President of the Philippines, and its members shall be the manager of the NPC, the NEA

Administrator, the Director General of the NEDA, the Chairman of the Board of Power and Waterworks, a representative of electric cooperatives to be chosen by a national association of electric cooperatives, and a representative of the private sector.

The Council shall have a Secretariat to be headed by an Executive Secretary and staffed by such number of personnel as may be determined by the Council. In order to augment the expertise necessary in the performance of its functions, the council may secure the detail of personnel, either on a part-time or full-time basis, as well as other forms of assistance from other government offices and agencies, including government-owned or controlled corporations. The qualifications and compensation of the personnel of the Secretariat shall be determined by the Council, but their appointments shall be made by the Chairman.

The salaries, expenses, operating expenses and such other necessary financial outlays for PDC shall be provided for from a special annual assessment to be determined by the Chairman of PDC and paid by the NEA and NPC.

The Council shall adopt an integrated plan of electrification and power development, coordinate the activities and operations of all sectors involved in electrification, and recommend such policies and measures to the proper authorities and parties concerned as it may deem necessary to achieve the total electrification objective declared in this Decree.

**SECTION 14. *Exemption From All Taxes, Duties, Fees, Imposts and Others Charges by Government and Governmental Instrumentalities.*** – The NEA shall devote all its returns from its capital investments as well as excess revenues from its operation to attain its objectives. To enable the NEA to pay its indebtedness and obligations and in furtherance and effective implementation of

the policy enunciated in this Decree, the NEA is hereby declared exempt:

- (a) From the payment of all taxes, duties, fees, imposts, charges, costs and restrictions to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities, including the taxes, duties, fees, imposts and other charges provided for under the *Tariff and Customs Code of the Philippines*, R.A. 1973, as amended by Presidential Decree No. 34 dated October 27, 1972, and Presidential decree No. 69 dated November 24, 1972, and filing and service fees and other charges or costs in any court or administrative proceedings in which it may be a party;
- (b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
- (c) From all import duties, compensating taxes and advance sales tax, wharfage fees on import of foreign goods required for its operations and projects; and
- (d) From all taxes, duties, fees, imposts, and all other charges imposed directly or indirectly by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the NEA in the generation, transmission, utilization and sale of electric power.

### **CHAPTER III Electric Cooperatives**

SECTION 15. *Organization and Purpose.* – Cooperative non-stock, non-profit membership corporations may be organized, and electric cooperative corporations heretofore formed or registered under the

*Philippine Non-Agricultural Cooperative Act* may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations.

SECTION 16. *Powers.* – A cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purpose and capable of being delegated by the President or the National Assembly when it comes into existence; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. Such powers shall include but not be limited to, the power:

- (a) To sue and be sued in its corporate name;
- (b) To have existence for a period of fifty years;
- (c) To adopt a corporate seal and alter the same;
- (d) To generate, manufacture, purchase, acquire, accumulate and transmit electric power and energy, and to distribute, sell, supply and dispose of electric energy to persons who are its members and to other persons not in excess of ten per centum of the number of its members: *Provided, however,* That a cooperative may furnish electric cold storage or processing plant service to non-members without limitation: and *Provided, further,* That a cooperative which acquires existing electric facilities may continue service from such facilities without requiring such persons to become members, but such persons may become members upon such terms as may be prescribed in the cooperative's by-laws;

- (e) To assist persons to whom service is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrically powered-appliances, equipment, fixtures and machinery for agricultural, commercial and industrial uses by the financing thereof or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electrically-powered appliances, equipment, fixtures and machinery;
- (f) To assist persons to whom service is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;
- (g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants, and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;
- (i) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidence of indebtedness, and to secure payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues: *Provided*, That any borrowing from, or any encumbering of its properties as security in favor of, any lending sources other than the NEA shall require the prior approval of the NEA Administrator and his certification that such is in furtherance of the purposes and is consistent with the provisions of this Decree, and that such borrowing and/or encumbering will not diminish the security of, or of the ability of the cooperative to repay, any then-outstanding indebtedness of the cooperative to the NEA or any other lending source below the level of such security and ability were such additional borrowing not being undertaken;
- (j) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways: *Provided*, That such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;
- (k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems;
- (l) To become a member of other cooperatives or corporations or to own stock therein, provided such cooperatives to corporations are engaged in a business or activities germane to or having a reasonable relation to the business or activities of the cooperative, its members, its directors, or its employees;



- (m) To conduct its business and exercise its powers within or without the province or provinces in which its supplies service;
- (n) To adopt, amend and repeal by-laws;
- (o) To fix, maintain, implement and collect rates, fees, rents, tolls, and other charges and terms and conditions for service: *Provided*, That by appropriate rules and regulations the NEA shall require that such shall be in furtherance of the purposes and in conformity with the provisions of this Decree; and
- (p) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

SECTION 17. *Name.* – The name of a cooperative shall include the words “Electric” and “Cooperative”, and the abbreviation “Inc.”. The name of a cooperative organized under this Decree shall be distinct from the name of any other cooperative already organized or converted under this Decree. The foregoing requirement shall not apply to any cooperative which becomes subject to this Decree by complying with the provisions of Section 31.

SECTION 18. *Incorporators.* – Five or more persons, including cooperatives, may organize a cooperative in the manner hereinafter provided.

SECTION 19. *Articles of Incorporation.* – The articles of incorporation of a cooperative shall recite that they are executed pursuant to this Decree and shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of the incorporators; and (d) the names and addresses of its original directors, who shall constitute the board until the first election of the board by the members; and may contain

any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators (or on their behalf, if they are cooperatives). It shall not be necessary to recite in the articles of incorporation the purpose for which the cooperative is organized or any of its corporate powers.

SECTION 20. *By-Laws.* – Unless reserved to the members in the articles of incorporation, the power to adopt and thereafter to amend or repeal by-laws shall vest in and be exercised by the board, the affirmative votes of a clear majority of all directors in office, after due notice to all directors, being requisite for such purpose. The by-laws shall set forth the basic rights and duties of members and directors and may contain any other provision for the regulation and management of the affairs of the cooperative not inconsistent with its articles of incorporation or this Decree.

SECTION 21. *Members.* – Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations with respect to membership.

The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefor and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws: *Provided*, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative.

For this purpose, individual permission need not be obtained from the proper head of office: *Provided, however,* That this authority shall not be construed as a permit to the government officer or employee concerned to devote official time to the affairs of the cooperative.

SECTION 22. *Meetings of Members.* –

- (a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws.
- (b) Special meetings of the members may be called by the President, by the board, by any three directors or, unless a smaller number or percentage be prescribed in the by-laws, by not less than 100 members or five per centum of all members, whichever shall be the lesser.
- (c) Except as otherwise provided in this Decree and unless otherwise provided for in the by-laws, written or printed notice stating the time and place of each meeting of the members and, in the case of special meetings, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten days nor more than twenty-five days before the date of the meetings. If mailed, such notice shall be deemed to be given when deposited in the Philippine mail with postage prepaid, addressed to the member at his address as it appears on the records of the cooperative.
- (d) Unless the by-laws prescribe the presence of a greater or lesser percentage or number of the members for such purpose, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members shall be five per centum of all members, present in person, and of a cooperative having more than 1,000

members shall be five per centum of all members or 100, whichever is lesser, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

- (e) Each member shall be entitled to one vote of each matter submitted to a vote at a meeting of the members. Voting shall be non-cumulative and in person, but, if the by-laws so provide, may also be by mail or by proxy.

SECTION 23. *Waiver of Notice.* – Any person entitled to notice of a meeting may waive notice in writing either before or after such meeting; however, his attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

SECTION 24. *Board of Directors.* –

- (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Decree, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board

and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.

- (b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting of, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Decree. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.
- (c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one-third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.
- (d) A majority of the board of directors in office shall constitute a quorum.
- (e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Decree or by its articles of incorporation or by-laws.

SECTION 25. *Districts.* – The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, the manner of changing such boundaries,

and the manner in which such districts shall function.

SECTION 26. *Officers.* – The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board. When a person holding any such office ceases to be a director, he shall ipso facto cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board may also elect or appoint such other officers, agent, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

SECTION 27. *Amendment of Articles of Incorporation.* – A cooperative may amend its articles of incorporation by complying with the following requirements: *Provided, however,* That a change of location of principal office may be effected in the manner set forth in Section 28. The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment or an accurate summary thereof. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of the total votes cast thereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make the annex thereto an affidavit stating that the provisions of this section with respect to the amendment set forth in such articles were duly complied with.

SECTION 28. *Change of Location of Principal Office.* – A cooperative may, upon authorization of its board or members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the place provided for in Section 34.

SECTION 29. *Consolidation.* – Any two or more cooperatives (each of which is hereinafter designated a “consolidating cooperative”) may consolidate into a new cooperative (hereinafter designated the “new cooperative”), by complying with the following requirements:

- (a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation or an accurate summary thereof.
- (b) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total voted cast thereon by each consolidating cooperatives voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this decree and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that

each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

SECTION 30. *Merger.* – Any one or more cooperatives (each of which is hereinafter designated a “merging cooperative”) may merge with one or more other cooperatives by complying with the following requirements:

- (a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of each merging cooperative and of the surviving cooperative, the notice of this shall have attached thereto a copy of the proposed articles of merger or an accurate summary thereof.
- (b) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each cooperative voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal affixed

thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Decree and shall state: (1) the name of each merging cooperative and the address of its principal office; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that each merging cooperative and the surviving cooperative agree to the merger (4) the names and addresses of the directors of the surviving cooperative, and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the surviving cooperative. The president or vice-president or each cooperative executing such articles of merger shall make an annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

SECTION 31. *Effect of Consolidation or Merger.* –

- (a) In the case of consolidation, the existence of the consolidating cooperative shall cease and the articles of consolidation shall be deemed to be the articles or incorporation of the new cooperative; and in the case of merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;
- (b) All rights, privileges, immunities and franchises and all property, real and personal, including without limitation

applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;

- (c) The new or surviving cooperative shall be responsible and liable for all liabilities and obligations of each of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidation or merger had not taken place, but the new or surviving cooperatives shall be substituted in its place; and
- (d) Neither the rights of creditors nor any liens upon the property of any such cooperatives shall be impaired by such consolidation or merger.

SECTION 32. *Conversion of Existing Corporation.* – Any corporation heretofore organized or registered under the *Philippine Non-Agricultural Cooperative Act* and supplying or having the corporate power to supply electric energy may convert itself into a cooperative under this Decree by complying with the following requirements, and shall thereupon become the subject to this Decree with the same effect as if originally organized hereunder:

- (a) The proposition for the conversion of such corporation and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion or an accurate summary thereof.
- (b) If the proposition for the conversion and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-

thirds of the total votes cast thereon by members at such meeting, and/or, if such corporation is a stock corporation or has both members and voting stockholders, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of such corporation represented at such meeting and voting thereon, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the corporation and the address of its principal office prior to the conversion into a cooperative; (2) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this Decree; (3) its name as a cooperative; (4) the addresses of the principal office of the cooperative; and (5) the names and address of the directors of the cooperative, and (6) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect to such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

SECTION 33. *Dissolution.* – A cooperative may be dissolved in the following manner: The proposition to dissolve shall be submitted to the members of the cooperative at any annual or special meetings, the notice of

which shall set forth such proposition. The members at any such meeting shall approve, by the affirmative vote of not less than a majority of all members of the cooperative, the proposition that the cooperative be dissolved (hereinafter designated the “certificate”) shall be executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved. Also, an affidavit, made by its president or vice-president executing the certificate, shall state that the statements in the certificate are true. Upon the filing of the certificate and affidavit as provided for in Section 34, the cooperative shall cease to carry on its business except to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution shall have been filed. The board shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week for two successive weeks in a newspaper of general circulation in the territory in which the principal office of the cooperative is located. The board shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, other than those patrons arising by reason of their patronage, and do all other things required to wind up its business; and, after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, shall distribute any remaining sums and/or unliquidated assets, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage; second, to members for the pro rata repayment of membership fees; and third, to patrons for the amounts of any outstanding

contributions in aid of construction they have made. Any sums and/or unliquidated assets then remaining shall be distributed in such manner as provided in the cooperative's articles of incorporation or by-laws, which may provide for distribution of such sums or assets on a patronage basis to persons who were members in one or more prior years or for transfer thereof to a new cooperative to succeed the one being dissolved. The board shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed; (4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that provision to the extent possible has been made therefor; and (6) that the provisions of this section have been duly complied with. The president or vice-president executing the articles of dissolution shall make the annex thereto an affidavit stating that the statement made therein are true.

SECTION 34. *Filing of Articles and Certificates.* – Articles of incorporations, amendment, consolidation, merger, conversion, or dissolution and certificates of changes in the location of principal offices and of elections to dissolve, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this Decree, shall be presented to the Administrator for filing in the records of his office. If he shall find that such conform to the requirements of this Decree, he shall so certify and shall file such in the records of his office. Upon such certification and filing, the incorporation, amendment, consolidation, merger, conversion, dissolution or certificate

provided for therein shall be in effect.

SECTION 35. *Non-profit, Non-discriminatory, Area Coverage Operation and Service.* – A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis; *Provided*, That for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction, such facilities extension deposit, such guarantee of minimum usage for a minimum term or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no different in standard rates for use of service shall be imposed for such purpose.

The by-laws of a cooperative or its contracts with members and patrons shall contain such reasonable terms and conditions respecting membership, the furnishing of service and the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit, cooperative character and to ensure compliance with this section. No bona fide applicant for membership on non-member patronage who is able and willing to satisfy and abide by all such terms and conditions shall be denied arbitrarily, capriciously or without good cause.

SECTION 36. *Disposition of Property.* –

- (a) The board of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or a deed of trust, or the pledging or encumbering otherwise, of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and whenever situated, as well as the revenues therefrom, all upon such terms and conditions as the board shall determine, to secure any borrowing by or indebtedness of the cooperative.
- (b) A cooperative may not otherwise sell, lease or, except by consolidation or merger, otherwise dispose of the property (other than merchandise and property which shall represent not in excess of ten per centum of the value of the cooperative's total assets, or which in the judgment of the board are not necessary or useful in operating the cooperative) unless such sale, lease or, except in the case of consolidation or merger, other disposition is (1) authorized by the affirmative vote of not less than a majority of all members of the cooperative and (2) consented by the NEA and any other lending source which then holds a lien on any of the cooperative's properties.

SECTION 37. *Non-Liability of Members for Debts of Cooperative.* – No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execute therefor.

SECTION 38. *Limitation of Actions.* – No action or suit may be brought against a cooperative, or against any agent, servant or employee thereof, by reason of the maintenance of electric transmission or distribution lines, or any related equipment, facilities or machinery, or any real property after the expiration of a period of five (5) years of continuous maintenance of such lines or

related equipment facilities or machinery.

SECTION 39. *Assistance to Cooperatives; Exemption from Taxes, Imports, Duties, Fees; Assistance from the National Power Corporation.* – Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

- (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.
- (b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale



of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

SECTION 40. *Exemption from Board of Power and Waterworks and Securities Exchange Commission.* –

- (a) Cooperatives shall be exempt from regulation by the Board of Power and Waterworks.
- (b) The provisions of the *Securities Act* shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or to any mortgage, deed of trust, indenture or other instrument executed to secure the same. The provisions of said Act shall not apply to the issuance of membership certificates or any other evidence of member or patron interest by a cooperative.

#### CHAPTER IV

#### Franchises; Regulation of Cooperatives

SECTION 41. *Applicability.* – This Chapter shall apply only to electric franchises as defined in Section 3. It shall not be applicable to franchises for any other utility service or to those separable portions of franchises covering any other type of utility service though such franchises may also cover electric service. The Board of Administrators shall hear and determine all questions which may arise under this Section.

SECTION 42. *Repeal of Franchise Powers of Municipal, City and Provincial Governments.*

– The powers of municipal, city and provincial governments to grant franchises, as provided for in Title 34 of the Philippines Statutes or in any special law, are hereby repealed: *Provided*, That this section shall not impair or invalidate any franchise heretofore lawfully granted by such a government or repeal any other subsidizing power of such governments to require that electric facilities and related properties be so located, constructed, operated and maintained as to be safe to the public and not to unduly interfere with the primary use of streets, roads, alleys and other public ways, buildings and grounds over, upon or under which they may be built.

SECTION 43. *Franchising Powers Delegated to the NEA.* – The power hereafter to grant and thereafter to repeal, alter or amended new franchises, to repeal, alter or amend all franchises heretofore granted by the Congress (or by the President or by the National Assembly after it comes into existence), and to repeal, alter or amend all franchises heretofore granted by any municipal, city or provincial government, is hereby delegated to the NEA, whose Board of Administrators shall, acting as a Commission, administer the provisions of this Chapter. Provisions of Republic Act 2677 to the country notwithstanding, no municipality shall hereafter initiate the operation, or after December 31, 1973, continue any operation heretofore initiated, of any service for sale at retail unless it shall first obtain a franchise from the NEA in accordance with the provisions of this Chapter. In exercising the powers herein delegated, the NEA shall at all times seek to serve the national objective of the most rapid total electrification of the Philippines on an area coverage basis. Without limiting the generality of the foregoing sentence, the NEA is hereby authorized, empowered and directed:

- (a) Within one hundred eighty days after the effective date of this Chapter (and

periodically thereafter, at least once annually) to notify and require every person holding a franchise to report to it, within not less than ninety days after such notice, an accurate description of the geographic area encompassed in such franchise, the number of households therein receiving adequate and dependable service, the number of households therein receiving service which is not adequate and dependable, the number and type of other retail customers therein receiving adequate and dependable service or service which is not adequate and dependable, the approximate total number of households therein, the date such franchise was granted and such other information and data as the NEA for the purpose of implementing this section may require, and, on the basis of such reports and otherwise, including complaints:

- (1) to review such franchises to determine whether the holders thereof are furnishing service on an area coverage basis or are engaged in effective measures to furnish such service within a reasonable time;
- (2) to repeal and cancel any franchise if the NEA finds that the holder thereof is not then furnishing, and is unable or unwilling within a reasonable time to furnish, adequate and dependable service on an area coverage basis within such area; and
- (3) to alter and condition such or other existing franchises and to issue new franchises to the end of assuring area coverage service throughout the Nation as in this Decree contemplated: *Provided*, That no franchise shall be altered, conditioned, repealed or cancelled, and no franchise shall be granted, without first affording the holder thereof, or the contending applicants

therefor, if such be the case, and any other interested parties opportunity for hearing; and

- (b) Upon determining, after affording opportunity for hearing to all interested parties, that such is necessary or appropriate to assure or expedite the furnishing of service on an area coverage basis, to require any public service entity to interconnect its generation, transmission or distribution facilities or related facilities with, and through such interconnection to exchange, sell or purchase power and energy with, to or from or to transmit power and energy on behalf of, any other public service entity or, if it so requests or consents, the NPC; and, if such public service entities (and, if such be the case, the NPC) are unable between or among themselves to agree upon such, to establish the manner and degree, to fix and apportion the financial responsibility and sharing of costs, and to determine the other terms and conditions of such interconnection, exchange, sale, purchase or transmission: *Provided, however*, That the provisions of Section 45 to the contrary notwithstanding, the provisions of this paragraph shall apply to industrial plants, factories, mills, mines and similar or other power generating entities in which case they shall qualify as public service entities for purposes of Section 4 (f).

SECTION 44. *Preference to Cooperatives.*  
– Whenever two or more public service entities are affected by and have competing or conflicting interests with respect to the granting, repeal, alteration or conditioning of the same franchise or franchises, and one or more of such entities are cooperatives, the NEA shall accord preference to a cooperative over any other type of public service entity (and shall prefer one cooperative over another) unless and except to the extent that an order in favor of another type of public service entity (or of another cooperative) will,

as found by the NEA, result both earlier and ultimately in the furnishing and extending of area coverage service (1) to a greater number of households, (2) over a larger geographic area, and (3) on the basis of the same or lower rates, charges and fees.

SECTION 45. *Furnishing Service Without a Franchise Prohibited.* – No person shall furnish or extend service to the public within any area for which such person has not been granted a franchise or after such a franchise has been repealed and cancelled or so conditioned or altered as to prohibit service therein: *Provided*, That such service may be continued and extended therein, and the NEA, after affording opportunity for hearing to any interested party, may by order require that it be so continued and extended until service to the customers of such person is made available by a public service entity lawfully authorized to serve therein.

SECTION 46. *Additional Regulation of Cooperatives by the NEA.* – In addition to the other ways in which cooperatives are subject to regulation by the NEA as provided in this Decree, the NEA, on its own motion or upon complaint but only after affording opportunity for hearing to all interested parties, is empowered to and shall (1) require a cooperative to extend or improve service upon the NEA's determination that such should be done in furtherance of the purposes of this Decree and that such may reasonably be done without undue impairment of the feasibility of the cooperative's operation and financial condition; and (2) require a cooperative to cease and correct any practice or act which the NEA determines to be in violation of the provisions of Section 35, and in connection with such authority it may require a cooperative to file with the NEA, and to make accessible to any person upon request therefor, copies of all rates, charges, contract forms, fee or deposit schedules, by-laws, and service rules and regulations.

SECTION 47. *Hearings and Investigations.* –

The NEA is empowered to conduct such hearings and investigations and to issue such orders as are necessary for it to implement the provisions of this Chapter, and in connection therewith, without necessary of previous hearing, to require any public service entity or the officials thereof to furnish to it such information and data, including statements of accounts, schedules of rates fees and charges, contracts, service rules and regulations, articles of incorporation, by-laws, audit reports and other internal records, documents, policies and procedures, as will enable the NEA to be sufficiently informed in exercising its powers and authorities: *Provided*, That no order shall issue finally determining and substantially affecting any right of any person subject to the NEA's jurisdiction without first affording such person and any other interested person opportunity for hearing as a party in the hearing proceeding.

SECTION 48. *Parties and Intervenors in NEA's Proceedings.* – Public service entities or any other interested person may invoke the NEA's exercise of its powers and authorities provided for in Section 43, 44, 45, 46 and 47 by filing verified applications or complaints with the NEA, and the NEA, on its own motion solely, may institute proceedings in connection with all matters coming under its jurisdiction as provided for in said sections. In any proceeding conducted by the NEA, including proceedings to establish NEA rules and regulations, all persons having a substantial interest therein shall, upon petition therefor, be permitted by the NEA to intervene as full parties, and the NEA, in its discretion, may permit persons having an insubstantial interest therein to intervene as a full party or on such limited basis as the NEA may prescribe.

SECTION 49. *NEA Rules and Regulations.* – The NEA shall establish appropriate rules and regulations to carry out the provisions of this Chapter IV, including rules for the conduct of NEA investigations, proceedings and

hearing; and shall timely publish the same when adopted or amended to the end that all persons affected thereby shall be given reasonable notice thereof.

SECTION 50. *Notice.* –

- (a) With respect to any NEA proceeding, investigation or hearing (including such as are for the purpose of establishing NEA rules and regulations) which may substantially affect the rights or interests of any person or persons (including the general public or the National Government or any department, agency, instrumentality of political subdivision thereof, if such be the case), the NEA shall cause timely notice in writing to be furnished to, or served upon, or appropriately published to such person or persons to the end of affording them reasonable opportunity, as a party or otherwise, directly to participate, or otherwise to have their positions, views and interests adequately presented to or represented, in such proceedings, investigation or hearing.
- (b) Upon the completion of any such proceeding, investigation or hearing, the NEA shall cause timely notice of any order issuing thereupon to be furnished to, or served upon, or appropriately published to any person or persons (including the general public or the National Government or any department, agency, instrumentality or political subdivision thereof, if such be the case) who will be directly affected thereby. Such notice shall be supplementary to, not in conflict with or in lieu of, the notices and services otherwise provided for in this Chapter.

SECTION 51. *Hearings Conducted by Board of Administrators or any Member Thereof.* – NEA hearings pursuant to this Chapter may be conducted by the Board of Administrators *en banc* or by any one or more members thereof, as the Board of Administrators may decide:

*Provided*, That the Administrator shall preside when the Board of Administrators sits *en banc*: *Provided, further*, That all hearings shall be of record: and *Provided finally*, that findings, determinations, orders and rulings based upon such hearings shall require the affirmative majority of all the members of the Board of Administrators upon the certification, to become a part of such findings, determinations and orders, on the part of any member of the Board who was absent from the hearings that he has read the record of the same.

SECTION 52. *Compensation.* – The members of the Board of Administrators and other hearing officers as the Board of Administrators may designate shall be entitled to per diem for each hearing actually conducted or attended by them in such amount as may be fixed by the President of the Philippines.

SECTION 53. *Hearing Rules; Contempt.* – All hearings and investigations conducted by the NEA shall be governed by rules adopted by the NEA, and in the conduct thereof the NEA shall not be bound by the technical rules of legal evidence: *Provided*, That the NEA or such member of the Board of Administrators when conducting a hearing, may summarily punish for contempt by a fine not exceeding Two Hundred Pesos (P 200.00) or by imprisonment not exceeding ten (10) days, or both, any person guilty of misconduct in the presence of the hearing or so near the same as to interrupt the hearing, proceeding, session or investigation including cases in which a person present at a hearing, proceeding, session or investigation refuses to be sworn as a witness or to answer as such when lawfully required to do so. To enforce the provisions of this section, the NEA, or such member thereof, may, if necessary, request the assistance of the municipal police for the execution of any order made for said purpose.

SECTION 54. *Subpoenas; Contempt.* –

- (a) The NEA may issue subpoenas and subpoenas *duces tecum*, for witness in any matter of inquiry pending before it, and require the production of all books, papers, tariffs, contracts, agreements, and all other documents which it may deem necessary in any proceeding. Such process shall be issued under the seal of the NEA, signed by one of the members of the NEA Board of Administrators, and may be served by any person of full age, or by registered mail. In case of disobedience to such subpoena, the NEA may invoke the aid of the Supreme Court, or of any Court of First Instance of the Philippines in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provision of this Chapter, and the Supreme Court, or any Court of First Instance of the Philippines within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena, issue to any public service entity subject to the provisions of this Decree, or to any person, an order requiring such public service entity or person to appear before the NEA and produce books and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such court as contempt thereof.
- (b) Any person who shall neglect or refuse to answer any lawful inquiry or produce before the NEA books, papers, tariffs, contracts, agreements, and documents, or other things called for by the NEA if his power to do so, in obedience to the subpoena or lawful inquiry of the NEA, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine not exceeding Five Thousand Pesos (P 5,000.00) or by imprisonment not exceeding one year, or both in the discretion of the court;
- (c) Any NEA Board Member shall have the power to administer oaths in all matters under the jurisdiction of the NEA;
- (d) Any person who shall testify falsely or make any false affidavit or oath before the NEA or before any of its members shall be guilty of perjury, and, upon conviction thereof in a court of competent jurisdiction, shall be punished as provided by law;
- (e) Witnesses appearing before the NEA in obedience to subpoena or subpoena *duces tecum* shall be entitled to receive the same fees and mileage allowance as witnesses attending Courts of First Instance in civil cases;
- (f) Any person who shall obstruct the NEA or any member of the NEA Board while engaged in the discharge of official duties, or who shall conduct himself in a rude, disrespectful or disorderly manner before the NEA or any NEA Board Member while engaged in the discharge of official duties, or shall orally or in writing be disrespectful to, offend or insult any of the NEA Board Members on occasion or by reason of the performance of official duties, upon conviction thereof by a court of competent jurisdiction, shall be punished for each offense by a fine not exceeding One Thousand Pesos (P 1,000), or by imprisonment not exceeding six months, or both, in the discretion of the court.

SECTION 55. *Testifying.* – No person shall be excused from testifying or from producing any book, document, or paper in any investigation or inquiry by or upon the hearing before the NEA when ordered so to do by the NEA, except when the testimony or evidence required of him may tend to incriminate him. Without the consent of the interested party, no member or employee of the NEA shall be compelled or permitted to give testimony in any civil suit to which the NEA is not a party,

with regard to secrets obtained by him in the discharge of his official duty.

SECTION 56. *Depositions.* – The NEA may, in any investigation, proceeding or hearing, by its order in writing, cause the deposition of witnesses residing within or without the Philippines to be taken in the manner prescribed by the *Rules of Court*. Where witnesses reside in places distant from Manila and it would be inconvenient and expensive for them to appear personally before the NEA, the NEA may, by proper order, commission any clerk of the Court of First Instance, municipal judge or justice of the peace of the Philippines to take the deposition of witnesses in any case pending before the NEA. It shall be the duty of the official so commissioned to designate promptly a date or dates for the taking of such deposition, giving timely notice to the parties, and on said date to proceed to take the deposition, reducing it to writing. After the depositions have been taken, the official so commissioned shall certify to the depositions taken and forward them as soon as possible to the NEA. It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken. In case there are no stenographers available, the testimony shall be taken in long hand by such person as the clerk of court, the municipal judge or justice of the peace may designate. The NEA may also commission a notary public to take the depositions in the same manner herein provided.

The Board may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the NEA to hear and investigate any case filed with the NEA or any matter within the jurisdiction of the NEA and in connection therewith to receive such evidence as maybe material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him for the Board of Administrators to enable the latter to render its decision.

SECTION 57. *Service.* – Every order made by the NEA shall be served upon the person or public service entity affected thereby within ten (10) days from the time said order is filed, by personal delivery or by ordinary mail, upon the attorney of record or, in case there be no attorney of record, upon the party interested; and in case a certified copy is sent by registered mail, the registry mail receipt shall be prima facie evidence of the receipt of such order by the public service entity in due course of mail.

SECTION 58. *Reconsideration.* – Any interested party may request the reconsideration of any order, ruling, or decision of the NEA by means of a petition filed not later than fifteen (15) days after the date of the notice of the order, ruling, or decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the NEA to decide the same within thirty (30) days, either denying the petition or revoking or modifying the order, ruling, or decision under consideration. If no petition for reconsideration is filed, no review by the Supreme Court as hereinafter provided shall be allowed.

SECTION 59. *Court Review.* – The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the NEA and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the NEA to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the jurisdiction of the NEA. The evidence presented to the NEA, together with the record of the proceedings before the NEA, shall be certified by the NEA to the Supreme Court. Any order, ruling, or decision of the NEA may likewise be reviewed by the Supreme Court upon a writ of certiorari in proper cases. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court. Any order,

ruling, or decision of the NEA may be reviewed on the application of any person or public service entity aggrieved thereby and who was a party in the subject proceeding, by certiorari in appropriate cases or by a petition for review, which shall be filed within thirty (30) days from the notification of the NEA order, decision, or ruling or reconsideration. Said petition shall be placed on file in the office of the Clerk of the Supreme Court who shall furnish copies thereof to the NEA and other interested parties.

SECTION 60. *No Stay.* – The institution of a writ of certiorari or other special remedies in the Supreme Court shall in no case supersede or stay any order, ruling, or decision of the NEA unless the Court shall so direct, and the appellant may be required by the Court to give bond in such form and of such amount as may be deemed proper.

SECTION 61. *NEA Counsel.* – The chief of the legal division or any other attorney of the NEA shall represent the same in all judicial proceedings. It shall be the duty of the Solicitor General to represent the NEA in any judicial proceeding if, for special reasons, the administrators shall request his intervention.

## **CHAPTER V** **Transitory Provisions**

SECTION 62. *Existing NEA Continued.* –

- (a) The existing Board of Administrators of the NEA and the Administrator thereof shall be the Board of Administrators and Administrator provided for under this Decree, and their respective terms shall be and continue as already established.
- (b) Any preference to the NEA in any existing law or in any executive order or proclamation of the President shall, with respect to any duty or function assumed

by the NEA pursuant to said Decree, be deemed hereafter to have reference to the NEA established under this Decree;

- (c) The properties, assets, rights, choses in action, obligations, liabilities, records and contracts of the NEA are hereby transferred to and are vested in, and assumed by the NEA established under this Decree;
- (d) All personnel of the NEA shall be absorbed and transferred to the NEA established under this Decree without demotion in rank nor reduction in salary; and
- (e) All on-going projects and/or approved loans of the NEA established under Republic Act No. 6038 shall be reviewed by the NEA established under this Decree and, insofar as found to be economically feasible in accordance with sound management, engineering and technological standards, shall be continued and completed on a priority basis.

SECTION 63. *Separability of Provisions.* – If any provision of this Decree, or the application of such provision to any person or circumstance, is declared invalid, the remainder of the Decree or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SECTION 64. *Effect on Other Acts.* – All acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

SECTION 65. *Effectivity.* – This Decree shall take effect immediately.

Done in the City of Manila, this 6th day of August in the year of Our Lord, nineteen hundred and seventy-three.

## PRESIDENTIAL DECREE NO. 1370

AMENDING SECTION 6 OF CHAPTER II OF PRESIDENTIAL DECREE NO. 269 IN ORDER TO INCREASE THE CAPITALIZATION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION

---

**WHEREAS**, under the basic policies for the rationalization of the electric power industry established under Presidential Decree No. 269, the NEA was given the responsibility of setting up electric cooperatives for the generation, transmission and distribution of electric power, and to determine privately-owned public utilities which should be permitted to remain in operation in order to attain total electrification on an area coverage basis;

**WHEREAS**, the magnitude of the electrification program envisioned under said decree requires the infusion of massive governmental support and financial assistance in order to achieve the ultimate objective of total electrification;

**WHEREAS**, the financial resources of NEA, although supplemented by foreign borrowings, are still deemed insufficient to finance and accelerate the rapid implementation of the national commitment of total electrification;

**WHEREAS**, it is necessary to appropriate additional funds for the immediate realization of this objective.

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section 6 of Presidential Decree No. 269 is hereby amended to read as follows:

“SECTION 6. *Capital Stock.* – The authorized capital stock of NEA is Two Billion Pesos divided into Fifty (50) Million shares with a par value of One Hundred Pesos (P 100.00) each, which shares are not to be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. Beginning with the Fiscal Year 1978, the sum of Two Hundred Million Pesos is hereby appropriated out of the funds in the National Treasury not otherwise appropriated and the same amount annually thereafter until the balance of the unpaid subscription of the government to the capital stock of the corporation shall have been paid in full. Such annual appropriation shall be programmed and released by the Budget Commission in accordance with the schedule of cash requirements to be submitted by the NEA: *Provided*, That this annual appropriation of Two Hundred Million Pesos and the programming and release thereof shall remain in force until the entire capital stock of the NEA is paid in full.”

SECTION 2. This Decree shall take effect immediately.

Done in the City of Manila, this 2nd day of May, in the year of Our Lord, nineteen hundred and seventy-eight.



## PRESIDENTIAL DECREE NO. 1645

AMENDING PRESIDENTIAL DECREE NO. 269, INCREASING THE CAPITALIZATION AND BROADENING THE LENDING AND REGULATORY POWERS OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND FOR OTHER PURPOSES

---

**WHEREAS**, under Presidential Decree No. 269, the National Electrification Administration (NEA) is charged with the responsibility of organizing, financing and regulating electric cooperatives throughout the country;

**WHEREAS**, the total electrification of all municipalities by the year 1987 is a declared goal of the government;

**WHEREAS**, the international energy crisis may seriously delay the attainment of electrification goals unless indigenous and renewable energy resources are immediately developed to supplement existing power systems;

**WHEREAS**, the development of systems powered by indigenous and renewable energy resources will require funding support beyond the capability of existing NEA capitalization and may require NEA equity investments in the said systems;

**WHEREAS**, there is a distinct need to provide NEA with additional authority to take measures that will better safeguard government inputs in electric cooperatives and other entities that are or will be related to the total electrification effort;

**NOW, THEREFORE**, I, FERDINAND E. MARCOS, President and Prime Minister of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree;

SECTION 1. Section 6 of Presidential Decree No. 269 (as amended) is hereby further amended to read as follows:

*“SECTION 6. Capital Stock. – The authorized capital of NEA shall be Five Billion Pesos, divided into fifty (50) million shares with a par value of one hundred pesos (P 100.00) each, which shares shall not be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation.*

The sum of not less than five hundred million pesos shall be earmarked out of the corporate equity investment funds contained in Batas Pambansa Blg. 40 and the same amount is hereby appropriated out of the funds in the National Treasury not otherwise appropriated, for the payment of subscriptions to NEA capital stock, for each year beginning with fiscal year 1981 until the unpaid subscription of the government to the capital stock of the corporation shall have been paid in full: *Provided*, That additional amounts as may be needed shall be included in the annual *General Appropriations Act.*”

SECTION 2. Section 4, Chapter II of Presidential Decree No. 269 is hereby amended by deleting the word “and” at the end of subsection “(n)”, modifying subsection (1) and adding new subsections (p), (q) and (r) to read as follows:

*“(1) To require the submission of Articles of Incorporation, by-laws, and documents relating to consolidation merger, conversion, dissolution, change in the location of principal offices, and election to*

dissolve, from all recipients of loans and/or equity investments and upon determination that such are in conformity with this Decree, to certify the same, to file them in the records of the NEA and to maintain a registry of such filings the provisions of Act No. 1458, as amended, to be contrary notwithstanding.”

“(p) To invest and/or grant loans for the development of power generation industries or companies, including dendro-thermal and mini-hydro-power plants and associated facilities such as alcogas and tree plantations, water impounding reservoirs and feeder roads: *Provided*, That such investments and loans shall be limited to a specific percentage of total requirements as may be determined by the NEA Board of Administrators.”

“(q) To organize wholly or partly owned companies and subsidiaries for the purpose of operating power generating and distribution systems and other related activities; and”

“(r) To organize wholly or partly owned subsidiaries for the purpose of manufacturing materials and equipment for power generating systems.”

SECTION 3. Section 5 (a), Chapter II of Presidential Decree No. 269 is hereby amended by adding sub-paragraph (6) to read as follows:

“(6) To authorize the NEA Administrator to designate, subject to the confirmation of the Board of Administrators, an Acting General Manager and/or Project Supervisor for a Cooperative where vacancies in the said positions occur and/or when the interest of the Cooperative

and the program so requires, and to prescribe the functions of said Acting General Manager and/or Project Supervisor, which powers shall not be nullified, altered or diminished by any policy or resolution of the Board of Directors of the Cooperative concerned.”

SECTION 4. Section 8 (b), Chapter II of Presidential Decree No. 269 is hereby amended to read as follows:

“(b) With respect to foreign indebtedness to be incurred by the NEA, such may be contracted, in the form of loans, credits convertible to foreign currencies, or other forms of indebtedness, from foreign governments or any international financial institution or fund source, including foreign private lenders. The total outstanding amount of such indebtedness exclusive of interest, shall not exceed eight hundred million United States dollars or the equivalent thereof in other currencies. The President of the Philippines by himself or through his duly authorized representative is hereby authorized to negotiate and to contract with foreign governments or any international financial institution or fund source in the name and on behalf of NEA and is further authorized to guarantee, absolutely and unconditionally, as primary obligor and not merely as a surety, in the name and on behalf of the Republic of the Philippines, the repayment of any indebtedness thereby contracted and the payment thereof of any due interest charge, up to the limited amount authorized by the foregoing, which shall be over and above the amounts which the President is authorized to guarantee under R.A. 6142, as amended, and also to guarantee

the performance of all or any of the obligations undertaken by the NEA in the territory of the Republic of the Philippines pursuant to this sub-paragraph (b). Any indebtedness contracted under this sub-paragraph (b) and the payment of the principal thereof and of any interest charges thereon, as well as the importation by the NEA, paid from the proceeds of any such contracted interest charges thereon, as well as the importation of machinery, equipment, materials, supplies and services by the NEA, paid from the proceeds of any such contracted indebtedness, shall also be exempt from all direct and indirect taxes, fees, imports, other charges and restrictions, including import restrictions, by the Republic of the Philippines or by any authority, branch, division or political subdivision thereof.”

SECTION 5. Section 10, Chapter II of Presidential Decree No. 269 is hereby amended to read as follows:

“SEC. 10. *Enforcement Powers and Remedies.* – In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board

of Administrators may avail of any or all of the following remedies:

- “(a) Refuse to make or approve any loan to the borrower or to release funds to implement loans that are otherwise already approved;
- “(b) Withhold NEA advances, or withhold approval of advances or fund releases in behalf of any other lender with respect to which the NEA has such power relative to loans made;
- “(c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;
- “(d) Foreclosure any mortgage or deed of trust or other security hold by the NEA on the properties of such borrower, in connection with which the NEA may subject to any superior or co-equal rights in such lien held by any other lender, (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA may, within five years

after acquiring such properties in foreclosure proceedings; sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or

“(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.”

“No Cooperative shall borrow money from any source without the Board of Administrators’ prior approval: *Provided*, That the NEA Board of Administrators, may, by appropriate rule or regulation, grant general permission to Cooperative to secure short-term loans not requiring the encumbrance of their real properties or of a substantial portion of their other properties or assets.”

SECTION 6. The provisions of Section 15 to 40, Chapter III of Presidential Decree No. 269, governing cooperatives shall be also applicable to mini-hydro and cendro-thermal power plants, alcogas and tree plantation and other power generating entities supported by NEA.

SECTION 7. Subsection (a), Section 24, Chapter III of Presidential Decree No. 269 is hereby amended to read as follows:

“SECTION 24. *Board of Directors.* – (a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.

“The composition, qualifications, the manner of elections and filling of vacancies, the procedures for holding meetings and other similar provisions shall be defined in the by-laws of the Cooperative subject to NEA policies, rules and regulations.

“No member of the Board shall receive any salary for his service as Director nor for services rendered in any other capacity. However, reasonable per diems for every Board meeting actually attended and reimbursement of actual expenses incurred in the performance of the duties of a member of the Board may be allowed as specified in NEA policies, rules and regulations.”

SECTION 8. Section 26, Chapter III of Presidential Decree No. 269 is hereby amended to read as follows:

“SECTION 26. *Officers.* – The officers of a cooperative shall consist of a President, Vice-President, Secretary and Treasurer, who shall be elected annually by and from the Board. When a person holding such office ceases to be a director, he shall *ipso facto* cease to hold such office. The offices of Secretary and of Treasurer may be held concurrently by one person. The Board may also elect or appoint such other officers, agents or employees as it deems necessary or advisable and shall prescribe their powers and duties, subject to the

pertinent provisions of this Decree, the Loan Agreement, and NEA policies, rules and regulation.”

Done in the City of Manila, this 8th day of October, in the year of Our Lord, nineteen hundred and seventy-nine.

SECTION 9. *Effectivity.* – This Decree shall take effect immediately.

# Chapter VI

## REPUBLIC ACT NO. 1815

AN ACT TO CREATE THE PHILIPPINE NUCLEAR ENERGY COMMISSION TO ADMINISTER, REGULATE, AND CONTROL THE USE, APPLICATION, AND DISPOSITION OF FISSIONABLE MATERIALS; TO AUTHORIZE THE ESTABLISHMENT AND ADMINISTRATION OF AN ATOMIC ENERGY REACTOR; TO DETERMINE THE MANNER OF DEVELOPMENT, USE AND CONTROL OF ATOMIC ENERGY, TO PROVIDE FUNDS THEREFOR, AND FOR OTHER PURPOSES

---

SECTION 1. For the purpose of carrying out the following functions, a Philippine Nuclear Energy Commission is hereby created:

- (1) To establish well-equipped laboratories for nuclear research and training manned by competent scientists and other personnel;
- (2) To encourage and directly undertake the training of promising men in the field of nuclear science and to select and screen young Filipinos for government scholarships abroad in nuclear physics, nuclear chemistry, and nuclear biology in various levels according to their competence and preparation;
- (3) To coordinate the work of various research institutions and entities and various government bureaus, particularly the and the AFP, in nuclear energy and its applications;
- (4) To represent the Philippines in atomic and nuclear energy conferences and dealings with local as well as foreign entities in matters pertaining to nuclear energy and its applications;
- (5) To standardize commercial samples of radioactive materials, particularly those urgently needed in medicine and agriculture;
- (6) To approve and facilitate the procurement of radioactive materials and instruments used in nuclear laboratories free from government taxes and unnecessary delays;
- (7) To issue licenses for the use of radioactive, fissionable, and fertile materials, including processing as far as such work is not covered by the *Mining Act*;
- (8) To disseminate accurate information, on various levels, regarding nuclear energy by means of publications, lectures, symposia, conferences, and other means of communication suitable for the occasion.

SECTION 2. The Philippine Nuclear Energy Commission shall be composed of five members to be appointed by the President of the Philippines, provided they have the necessary specified qualifications and subject to the confirmation of the Commission on Appointments. The members shall be

citizens of the Philippines, of legal age, of proper mental aptitude and scientific training and shall have passed the necessary security clearance. The chairman of said Nuclear Energy Commission shall have a cabinet rank worthy of the importance of nuclear energy and its applications for the scientific progress of the Philippines in this new field.

The chairman and vice-chairman of the Commission shall have, in addition to the already stated qualifications, the necessary scientific and technical qualifications, a doctorate in physics and/or chemistry, and a broad professional background. The term of office of each member of the Commission shall be four (4) years, as follows: one for one year, another for two years, the third for three years, and the last two for four years; and any member appointed to fill a vacancy prior to the expiration of the term of his predecessor shall be appointed only for the remaining period of the term.

The President of the Philippines may remove from office any member of the Commission, after hearing for cause, for inefficiency, neglect of duty, disloyalty or gross misconduct in office, or conviction of crimes involving national security, in accordance with existing laws.

The chairman and the vice-chairman shall be full-time members of the Commission and shall receive an annual compensation of Twenty-Four Thousand Pesos and Eighteen Thousand Pesos, respectively, and the other members shall receive a *per diem* compensation of Sixty Pesos for each meeting attended, and all members shall be entitled to necessary traveling and other expenses while engaged in the work of the Commission.

SECTION 3. There is hereby created a Technical Advisory Committee to advise, collectively or individually, the Commission on scientific and technical matters relating to minerals, materials, production, and research and development, to be composed of nine

members who shall be appointed by the President, upon the recommendation of the Philippine Nuclear Energy Commission, and shall include one each of (a) physicist, (b) chemist, (c) engineer, (d) doctor of medicine, (e) agriculturist, (f) biologist, (g) industrialist, (h) economist, and (i) pharmacist. The members of this Technical Advisory Committee shall receive a per diem of Fifty Pesos and transportation expenses.

The Commission is empowered to request the services of any qualified person in the Philippines, whenever such services are indispensable to the Commission, under the same conditions as any member of the Technical Advisory Committee.

SECTION 4. The chairman, with the approval of the Commission, shall appoint an Executive Secretary, a Director of Research, and a Director of Regulation Services, and any other such personnel as the chiefs for the following divisions: (a) under the Director of Research, the Division of Reactor Design and Operation, the Division of Nuclear Physics, the Division on Isotope Works, and the Training Division; and (b) under the Director of Regulation Services, the Medical Services Division, Agricultural Services Division, Industrial Services Division, Legal and Administrative Division, Procurement and Disposal of Radioactive Materials Division, and such other personnel as may be necessary to carry out the purposes of this Act. The Commission shall be empowered to fix compensation and terms of office of these officers, unless covered by the civil service regulations.

SECTION 5. The Philippine Nuclear Energy Commission shall:

- (1) Be authorized to issue license in favor of any qualified person, partnership or corporation to sell, buy, process, use and/or dispose of radioactive and/or fissionable materials for commercial, industrial, scientific, agricultural and/or

medical uses, or for the conduct of test, experiment and research along such lines, and for any other purpose, provided that those already engaged in such nuclear research are allowed to continue unless violating any other provision of this Act. Users of less than ten millicuries of radioactive substance are only required to notify the Commission and make the necessary safeguards.

- (2) Make arrangements for the establishment of a nuclear reactor, and, in general, to conduct research and development relating to:
  - (a) Nuclear processes;
  - (b) The theory and production of atomic energy, including processes, materials, and devices related to such production;
  - (c) Utilization of special nuclear material and radioactive material for commercial, industrial, medical, biological, agricultural, health, or military purposes;
  - (d) The promotion of nuclear research and application in all fields of nucleonics;
  - (e) The issuance of rules and regulations for the personnel and the general public, and see to it that enforcement of such rules and regulations for the protection of personnel and the public is carried out.
- (3) Acquire and distribute supplies of fissionable materials and suitable isotopes.
- (4) Screen, select, and appoint candidates for overseas training in nuclear technology and science at government expense.

- (5) Promulgate rules and regulations regarding the purchase, sale, processing, use and disposition of radioactive and/or fissionable materials and such other rules and regulations necessary to carry out the provisions of this Act; and
- (6) Be authorized to perform any other activity to carry out its purpose as stated in section one of this Act.

SECTION 6. The Commission may call upon any department, bureau, office, or agency of the Government for the purpose of securing any information, data, and materials necessary in carrying out its work or in enforcing its regulations.

SECTION 7. The Commission shall be empowered to offer research facilities and financial or other to deserving projects by public or private parties. In case patentable inventions should result from such government-subsidized research, the benefits shall be shared equally between the inventory and the government.

SECTION 8. No person, association, partnership or corporation shall sell, buy, process, use, and/or otherwise dispose of radioactive and/or other fissionable or fertile materials and tritium without first being duly licensed by the Philippine Nuclear Energy Commission, with the exception of conventional commercial items, like luminous-dial clocks, or any other item for ordinary use, provided they do not contain more than ten microcuries of radioactive substance or its equivalent.

SECTION 9. All persons connected with the Philippine Nuclear Energy Commission shall, prior to appointment, be cleared for security purposes.

The Commission has the power to decide which information may be withheld from the public for reason of national security.



SECTION 10. There is hereby appropriated, out of any funds of the National Treasury not otherwise appropriated, an initial sum of Two Million Pesos for the purpose of carrying out the provisions of this Act, and funds for at least one million pesos shall be appropriated yearly for maintenance and research. The Philippine Nuclear Energy Commission shall submit yearly progress reports of its work to the President of the Philippines.

SECTION 11. Any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Act or of any regulations promulgated thereunder, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere, in the administration of the provisions of this Act, shall, upon conviction thereof, be punished by a fine of not more than Ten Thousand

Pesos or by imprisonment of not more than five years, or both, in the discretion of the Court.

Whoever commits such offense with intent to injure the Republic of the Philippines or with intent to give advantage in favor of any foreign nation by such treasonable act shall, upon conviction thereof, be punished by death or imprisonment for life.

SECTION 12. This Act shall be known as the *Philippine Nuclear Energy Act of 1957*.

SECTION 13. This Act shall take effect upon its approval.

Approved, June 22, 1957

## REPUBLIC ACT NO. 7832

AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF AND FOR OTHER PURPOSES

SECTION 1. *Short Title*. – This Act shall be referred to as the “Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994”.

SECTION 2. *Illegal Use of Electricity*. – It is hereby declared unlawful for any person, whether natural or juridical, public or private, to:

- (a) Tap, make or cause to be made any connection with overhead lines, service drops, or other electric service wires, without previous authority or consent of the private electric utility or rural electric cooperative concerned;
- (b) Tap, make or cause to be made any connection to the existing electric service

facilities of any duly registered consumer without the latter’s or the electric utility’s consent or authority;

- (c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry or metering of electric current or otherwise results in its diversion in a manner whereby electricity is stolen or wasted;
- (d) Damage or destroy an electric meter, equipment, wire or conduit or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electric current; and

- (e) Knowingly use or receive the direct benefit of electric service obtained through any of the acts mentioned in subsections (a), (b), (c), and (d) above.

SECTION 3. *Theft of Electric Power Transmission Lines and Materials.* –

- (a) It is hereby declared unlawful for any person to:

- (1) Cut, saw, slice, separate, split, sever, smelt, or remove any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation or any other place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;
- (2) Take, carry away or remove or transfer, with or without the use of a motor vehicle or other means of conveyance, any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation, or any place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;
- (3) Store, possess or otherwise keep in his premises, custody or control, any electrical power transmission line/material or meter without the consent of the owner, whether or not the act is done for profit or gain; and
- (4) Load, carry, ship or move from one place to another, whether by land, air or sea any electrical

power transmission line/material, whether or not the act is done for profit or gain, without first securing a clearance/permit for the said purpose from its owner or the National Power Corporation (NPC) or its regional office concerned, as the case may be.

- (b) For purposes of this section, “electrical power transmission line/material” refers to electric power transmission steel towers, woodpoles, cables, wires, insulators, line hardwares, electrical conductors and other related items with a minimum voltage of sixty-nine kilovolts (69 kv), such as the following:

- (1) Steel transmission line towers made of galvanized steel angular members and plates or creosoted and/or tannelized woodpoles/concrete poles and designed to carry and support the conductors;
- (2) Aluminum conductor steel reinforced (ACSR) in excess of one hundred (100) MCM;
- (3) Overhead ground wires made of 7 strands of galvanized steel wires, 3.08 millimeters in diameter and designed to protect the electrical conductors from lightning strikes;
- (4) Insulators made of porcelain or glass shell and designed to insulate the electrical conductors from steel towers or woodpoles; and
- (5) Various transmission line hardwares and materials made of aluminum alloy or malleable steel and designed to interconnect the towers, conductors, ground wires, and insulators mentioned in subparagraphs (1), (2), (3) and (4) above for the safe and reliable operation of the transmission lines.

SECTION 4. *Prima Facie Evidence.* –

(a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:

- (i) The presence of the bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;
- (ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;
- (iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;
- (iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph or computerized chart, graph or log;
- (v) The presence in any part of a building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: *Provided, however,* That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

(b) The possession, control or custody of electric power transmission line/ material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be *prima facie* evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof.

SECTION 5. *Incentives.* – An incentive scheme by way of a monetary reward in the minimum amount of Five Thousand Pesos (P 5,000) shall be given to any person who shall report to the NPC or police authorities any act which may constitute a violation of Section 3 hereof.

The Department of Energy (DOE), in consultation with the NPC, shall issue the necessary guidelines for the proper implementation of this incentive scheme within thirty (30) days from the effectivity of this Act.

**SECTION 6. *Disconnection of Electric Service.***  
– The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving the written notice or warning to the effect, without the need of a court or administrative order, and deny restoration of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *en flagrante delicto* doing any of the acts enumerated in section 4 (a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time: *Provided*, That in the second case, a written notice or warning shall have been issued upon the first discovery: *Provided, further*, That the electric service shall not be immediately disconnected or shall not be immediately restored upon the deposit of the amount representing the differential billing by the person denied the service, with the private electric utility or the rural cooperative concerned or with the competent court as the case may be: *Provided, furthermore*, That if the court finds that illegal use of electricity has not been committed by the same person, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the private utility or rural electric cooperative, and the utility or cooperative shall be made to immediately pay such person double the value of the payment or deposit with legal interest, which amount shall likewise be creditable against immediate future billings, without prejudice to any criminal, civil or administrative action that such person may be entitled to file under existing laws, rules and regulations: *Provided, finally*, That if the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or the rural electric cooperative

concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.

For purposes of this Act, “differential billing” shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among other, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either : (a) the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of the discovery, (c) the higher consumption between the average consumption before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was change in his service connection such as a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: *Provided, however*, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

**SECTION 7. *Penalties.*** –

(a) Violation of Section 2 – The penalty of *prision mayor* or a fine ranging from Ten Thousand Pesos (P 10,000) to Twenty Thousand Pesos (P 20,000) or both, at the discretion of the court, shall be imposed on any person found guilty of violating Section 2 hereof.

(b) Violation of Section 3 – The penalty of *reclusion temporal* or a fine ranging from Fifty Thousand Pesos (P 50,000) to One Hundred Thousand Pesos (P 100,000) or both, at the discretion of the court, shall be imposed on any person found guilty of violating Section 3 hereof.

(c) Provision common to violations of Section 2 and Section 3 hereof – If the offense is committed by, or in connivance with, an officer or employee of the power company, private electric utility or rural electric cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company and from holding any public office.

If, in committing any of the acts enumerated in Section 4 hereof, any of the other acts enumerated is also committed, then the penalty next higher in degree as provided herein shall be imposed.

If the offense is committed by, or in connivance with an officer or employee of an electric utility concerned, such officer or employee shall, upon conviction, be punished with a penalty of one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company. Likewise, the electric utility concerned which shall have knowingly permitted or having knowledge of its commission shall have failed to prevent the same, or was otherwise guilty of negligence in connection with the commission thereof, shall be made to pay a fine not exceeding triple the amount of the “differential billing” subject to the discretion of the courts.

If the violation is committed by a partnership, firm, corporation, association, or any other

legal entity, including a government-owned or -controlled corporation, the penalty shall be imposed on the president, manager, and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission of the offense.

SECTION 8. *Authority to Impose Violation of Contract Surcharges.* – A private electric utility or rural electric cooperative may impose surcharges, in addition to the value of electricity pilfered, on the bills of any consumer apprehended for tampering with his electric meter/metering facility installed on his premises, as well as other violations of contract like direct connection, use of jumper, and other means of illicit usage of electricity found installed in the premises of the consumer. The surcharge for the violation of contract shall be collected from and paid by the consumer concerned as follows:

- (a) First apprehension – Twenty-five percent (25%) of the current bill as surcharge;
- (b) Second apprehension – Fifty percent (50%) of the current bill as surcharge; and
- (c) Third and subsequent apprehensions – One hundred percent (100%) of the current bill as surcharge.

The private electric utility or rural electric cooperative is authorized to discontinue the electric service in case the consumer is in arrears in the payment of the above-imposed surcharges.

The term “apprehension” as used herein shall be understood to mean the discovery of the presence of any of circumstances enumerated in Section 4 hereof in the establishment or outfit of the consumer concerned.

SECTION 9. *Restriction on the Issuance of Restraining Orders or Writs of Injunction.* – No writ of injunction or restraining order shall be issued by any court against any private electric

utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is a *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.

If, notwithstanding the provisions, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing", penalties and other charges, or to the total value of the subject matter of the action: *Provided, however,* That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as the above required: *Provided, finally,* That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for its order.

SECTION 10. *Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof.* – There is hereby established a cap on the recoverable rate of system losses as follows:

- (a) For private electric utilities;
  - (i) Fourteen and a half percent (14 1/2%) at the end of the first year following the effectivity of this Act; and
  - (ii) Thirteen and one-fourth percent (13 1/4%) at the end of the second year following the effectivity of this Act;
  - (iii) Eleven and three-fourth percent (11 3/4%) at the end of the third year following the effectivity of this Act;

- (iv) Nine and a half percent (9 1/2%) at the end of the fourth year following the effectivity of this Act.

*Provided,* That the ERB is hereby authorized to determine at the end of the fourth year following the effectivity of this Act, and as often as necessary taking into the account the viability of private electric utilities and the interest of the consumers, whether the caps herein or therefor established shall be reduced further which shall, in no case, be lower than nine percent (9%) and according accordingly fix the date of the effectivity of the new caps: *Provided, further,* That in the calculation of the system loss, power sold by the NPC or any other entity that supplies power directly to a consumer and not through the distribution system of the private electric utility shall not be counted even if the billing for the said power used is through the private electric utility.

The term "power sold by NPC or any other entity that supplies power directly to a consumer" as used in the preceding paragraph shall for purposes of this section be deemed to be sale directly to the consumer if : (1) the point of metering by the NPC or any other utility is less than one thousand (1,000) meters from the consumer, or (2) the consumer's electric consumption is three (3%) or more of the total load consumption of all the customers of the utility, or (3) there is no other consumer connected to the distribution line of the utility which connects to the NPC or any other utility point of metering to the consumer meter.

- (b) For rural electric cooperatives:
  - (i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
  - (ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;

- (iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
- (iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and
- (v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

*Provided*, that the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

*Provided, finally*, That in any case nothing in this Act shall impair the authority of the ERB to reduce or phase out technical or design losses as a component of system losses.

SECTION 11. *Area of Coverage.* – The caps provided in Section 10 of this Act shall apply only to area of coverage of private electric utilities and the rural electric cooperatives as of the date of the effectivity of this Act.

The permissible levels of recovery for system losses in areas of coverage that may be added on by either a private electric utility or a rural cooperative shall be determined by the ERB.

SECTION 12. *Recovery of Pilferage Losses.* – Any private electric utility or rural electric cooperative which recovers any amount of pilferage losses, shall, within thirty (30) days from said recovery, report in writing and under oath to the ERB: (a) the fact of recovery, (b) the date thereof, (c) the name of the consumer concerned, (d) the amount recovered, (e) the amount of pilferage loss claimed, (f) the explanation for the failure to

recover the whole amount claimed, and (g) such other particulars as may be required by ERB. If there is a case pending in court for the recovery of a pilferage loss, no private electric utility or rural electric cooperative shall accept payment from the consumer unless so provided in a compromise agreement duly executed by the parties and approved by the court.

SECTION 13. *Information Dissemination.* – The private electric utilities, the rural electric cooperatives, the NPC, and the National Electrification Administration (NEA) shall, in cooperation with each other, undertake a vigorous campaign to inform their consumers of the provisions of this Act especially sections 2, 3, 4, 5, 6, 7 and 8 hereof, within sixty (60) days from the effectivity of this Act and at least once a year thereafter, and to incorporate a faithful condensation of said provisions in the contracts with new consumers.

SECTION 14. *Rules and Regulations.* – The ERB shall, within thirty (30) working days after the conduct of due hearings which must commence within thirty (30) working days upon the effectivity of this Act, issue the rules and regulations as may be necessary to ensure the efficient and effective implementation of the provisions of this Act, to include but not limited to, the development of methodologies for computing the amount of electricity illegally used and the amount of payment deposit contemplated in Section 7 hereof, as a result of the presence of the *prima facie* evidence discovered.

The ERB shall, within the same period, also issue rules and regulations on the submission of the reports required under Section 12 hereof and the procedure for the distribution to or crediting of consumers for recovered pilferage losses.

SECTION 15. *Separability Clause.* – Any portion or provision of this Act which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

SECTION 16. *Repealing Clause.* – The provisions in Presidential Decree No. 401, as amended by Batas Pambansa Blg. 876, penalizing the unauthorized installation of electrical connections, tampering and/or knowing use of tampered electrical meters or other devices, and the theft of electricity are hereby expressly repealed. All other laws, ordinances, rules, regulations, and other issuances or parts thereof, which

are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 17. *Effectivity Clause.* – This Act shall take effect thirty (30) days after its publication in the *Official Gazette* or in any two (2) national newspapers of general circulation.

Approved, December 8, 1994.

## RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7832

---

Pursuant to Section 14 of Republic Act No. 7832, the Energy Regulatory Board hereby adopts and promulgates the following Rules and Regulations to implement the aforesaid law.

### RULE I GENERAL PROVISIONS

SECTION 1. *Title.* – These Rules shall be known as the Implementing Rules and Regulations of the *Anti-Pilferage of Electricity and Theft of Electric Transmission Lines/Materials Act of 1994.*

SECTION 2. *Construction.* – These Rules shall be strictly construed to attain the efficient and effective implementation of R.A. 7832.

SECTION 3. *Definition of Terms.* – As used in these Rules:

- (a) “ERB” means the Energy Regulatory Board;
- (b) “DOE” means the Department of Energy;
- (c) “NEA” means the National Electrification Administration;
- (d) “NPC” means the National Power Corporation;

(e) “Utility” means the Private or Investor-owned Electric Utility and that is owned and/or operated by the Municipal, City, Provincial or National Government;

(f) “Cooperative” means the Rural Electric Cooperative;

(g) “Electric power transmission line/material” refers to electric power transmission steel towers, wood poles, cables, wires, insulators, line hardwares, electrical conductors and other related items with minimum voltage of sixty-nine kilovolts (69 kv), such as the following:

- (1) Steel transmission line towers made of galvanized steel angular members and plates or creosoted and/or tannelized wood poles/concrete poles and designed to carry and support the conductors;
- (2) Aluminum conductor steel reinforced (ACSR) in excess of one hundred (100) MCM;
- (3) Overhead ground wires made of seven (7) strands of galvanized steel wires, 3.08 millimeters in diameter and designed to protect the electrical conductors from lightning strikes;



- (4) Insulators made of porcelain or glass shell and designed to insulate the electrical conductors from steel towers or wood poles; and
- (5) Various transmission line hardwares and materials made of aluminum alloy or malleable steel and designed to inter-connect the towers, conductors, ground wires, and insulators mentioned in subparagraphs (1), (2), (3) and (4) above for the safe and reliable operation of transmission lines.
- (h) "Differential billing" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed as determined through the use of methodologies outlined in Section 6 of R.A. 7832;
- (i) "Apprehension" shall be understood to mean the discovery of the presence of any circumstances enumerated in Section 4 of R.A. 7832 in the establishment or outfit of the consumer concerned as personally witnessed and attested to by the consumer concerned or as duly authorized ERB representative or any officer of the law, as the case may be;
- (j) "Power sold by NPC or any other entity that supplies power directly to a consumer" is deemed to be sale directly to the consumer if: (1) the point of metering by the NPC or any other utility is less than one thousand (1,000) meters from the consumer, or (2) the consumer's electric consumption is three percent (3%) or more of the total load consumption of all the customers of the utility; or (3) there is no other consumer connected to the distribution line of the utility which connects to the NPC or any other utility point of metering to the consumer meter;
- (k) "Current rate" shall mean the average rate of electricity per kilowatt-hour as

reflected in the current bill;

- (l) "Current bill" shall mean the latest monthly bill served by the utility or cooperative which does not include any period before the time of apprehension.

**RULE II  
ILLEGAL USE OF ELECTRICITY AND THEFT  
OF ELECTRIC POWER TRANSMISSION LINES  
AND MATERIALS**

SECTION 1. *Illegal Use of Electricity.* – It shall be unlawful for any person, natural or juridical, private or public to:

- (a) Tap, make or cause to be made any connection with overhead lines, service drops, or other electric service wires, without previous authority or consent of the private electric utility or rural electric cooperative concerned;
- (b) Tap, make or cause to be made any connection to the existing electric service facilities of any duly registered consumer without the latter's or the electric utility's consent or authority;
- (c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry or metering of electric current or otherwise results in its diversion in a manner whereby electricity is stolen or wasted;
- (d) Damage or destroy an electric meter, equipment, wire or conduit or allow any of them to be so damaged or destroyed as to interfered with the proper or accurate metering of electric current; and
- (e) Knowingly use or receive the direct benefit of electric service obtained through any of the acts mentioned in subsections (a), (b), (c) and (d) above.

SECTION 2. *Theft of Electric Power Transmission Lines and Materials.* – It shall be unlawful for any person, natural or juridical, public or private to:

- (a) Cut, saw, slice, separate, split, sever, smelt or remove any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation or any other place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;
- (b) Take, carry away or remove or transfer, with or without the use of a motor vehicle or other means of conveyance, any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation, or any place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;
- (c) Store, possess or otherwise keep in his premises, custody or control, any electrical power transmission line/material or meter without the consent of the owner, whether or not the act is done for profit or gain; and
- (d) Load, carry, ship or move from one place to another, whether by land, air or sea any electrical power transmission line/material, whether or not the act is done for profit or gain, without first securing a clearance, permit for the said purpose from its owner or the NPC or its regional office concerned, as the case may be.

**RULE III  
PRIMA FACIE EVIDENCE**

SECTION 1. *Prima facie evidence of illegal use of electricity.* – The presence of any of the

following circumstances shall constitute *prima facie* evidence of illegal use of electricity by the person benefited thereby:

- (a) The presence of a bored hole on the glass cover of the electric meter or at the back of any part of said meter;
- (b) The presence of salt, sugar and other elements inside the electric meter that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;
- (c) The existence of any wiring connection which affects the normal operation or registration of the electric meter;
- (d) The absence of an ERB/NEA seal or the presence of a tampered, broken or fake seal on the meter or mutilated, altered or tampered meter recording chart or graph or computerized chart, graph or log;
- (e) The presence of a current reversing transformer, jumper, shorting and/or shunting wire and/or loop connection or other similar device in any part of the building or its premises which is subject to the control of the consumer or on the electric meter;
- (f) The mutilation, alteration, reconnection, bypassing or tampering of instruments, transformers and accessories;
- (g) The destruction of or attempt to destroy any integral accessory of the metering device box which encases an electric meter or its metering accessories; and
- (h) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (a), (b), (c),

(d), (e), (f), or (g) hereof.

A *prima facie* evidence of illegal use of electricity shall be the basis for: (a) immediate disconnection by the electric utility or cooperative to any such person after due notice; (b) the holding of preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information; and (c) the lifting of any temporary restraining order or injunction which may have been issued against a utility or cooperative.

In order to constitute *prima facie* evidence the discovery of any of the circumstance enumerated in Section 1 hereof, must be personally witnessed and attested to by the consumer concerned or a duly authorized ERB representative or any officer of the law, as the case may be.

An ERB authorized representative is one who is assigned to conduct testing of electric meters or inspection of electric lines and facilities of any distribution entity or one who may be specifically authorized by the duly authorized head of the main or regional ERB offices.

An officer of the law is any person who, by direct provision of the law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, barangay chairman, barangay councilman, barangay leader, officer or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor, and provincial fiscal.

**SECTION 2. *Prima facie evidence of Theft of Power Transmission Lines and Materials.*** – The possession, control or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture

of such electric power transmission line/material shall be *prima facie* evidence that such line/material is the fruit of the offense in Section 2, Rule II hereof, and such line/material may be confiscated from the person in possession, control or custody thereof.

#### **RULE IV INCENTIVES**

**SECTION 1. *Incentive Scheme.*** – An incentive scheme by way of a monetary reward in the minimum amount of Five Thousand Pesos (P 5,000.00) shall be given to any person who shall report to the NPC or police authorities any act which may constitute a violation of Section 2, Rule II hereof, the Department of Energy (DOE), in consultation with the NPC, shall issue the necessary guidelines for the proper implementation of this incentive scheme within thirty (30) days from the effectivity of R.A. 7832.

#### **RULE V DISCONNECTION OF ELECTRIC SERVICE**

**SECTION 1. *Right to Disconnect and its Requirements.*** – The utility or cooperative concerned shall have the right and authority to disconnect immediately the electric service of any person, natural or juridical, without need of a court order or administrative order and deny restoration of the same, in the following circumstances:

- (a) When the owner/occupant of the house or establishment concerned or someone acting in his behalf shall have been caught *in flagrante delicto* doing any of the acts enumerated in Section 1, Rule II hereof: *Provided*, That a written notice or warning to that effect has been served by the utility or cooperative concerned to the owner of the house/establishment or his duly authorized representative, prior to such disconnection.
- (b) When any of the circumstances enumerated in Section 1, Rule II shall

have been discovered for the second time: *Provided*, That a written notice or warning shall have been issued upon the first discovery.

The written notice or warning referred to herein shall be served prior to each disconnection and shall indicate the name and address of the consumer, consumer account number, date of apprehension, findings of fact, amount of energy pilfered in kilowatt-hour, the amount representing the differential billing and the method used in computing the differential billing as determined herein, which shall indicate the following:

- (a) Computation of the unbilled consumption in kilowatt-hour.
- (b) The period to be used in computing the differential billing.
- (c) The latest Inspection Report prior to apprehension.

SECTION 2. *Deposit.* – The utility or cooperative concerned shall immediately restore the electric service upon deposit by the person denied the service with the utility or cooperative concerned or with the competent court, as the case may be, of the amount representing the differential billing.

## **RULE VI PENALTIES**

SECTION 1. *Liability of the utility/cooperative.* – If the court finds by final judgment that the person has not committed illegal use of electricity, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the utility or cooperative.

Likewise, the utility or cooperative shall be made to immediately pay such person double the value of the payment or deposit with legal interest, which amount shall be creditable against immediate future billings.

The foregoing remedies are without prejudice to any criminal, civil or administrative action that such person may be entitled to existing laws, rules and regulations.

SECTION 2. *Liabilities Under Section 1, Rule II hereof.* – If the person has been found by final judgment to have violated Section 1, Rule II hereof, he shall be made to pay the utility or cooperative concerned double the value of the estimated electricity illegally used which is referred to in this Section has differential billing, in addition to the penalty of *prision mayor* or a fine of Ten Thousand Pesos (P 10,000.00) to Twenty Thousand Pesos (P 20,000.00) or both, at the discretion of the court.

- (a) If the offense is committed by, or in connivance with, an officer or employee of the power company, electric utility or rural electric cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company and from holding any public office.
- (b) If, in committing any of the acts enumerated in Section 1, Rule II hereof, any of the other acts enumerated is also committed, then the penalty next higher in degree herein shall be imposed.
- (c) If, in committing any of the acts enumerated in Section 1, Rule II hereof, any of the other acts enumerated is also committed by, or in connivance with an officer or employee of the power company, utility or cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty of one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or

private utility or service company. Likewise, the electric utility concerned which shall have knowingly permitted or having knowledge of its commission shall have failed to prevent the same, or was otherwise guilty of negligence in connection with the commission thereof, shall be made to pay a fine not exceeding triple the amount of the “differential billing”, subject to the discretion of the courts.

- (d) If the violation is committed by a partnership, firm, corporation, association, or any other legal entity, including a government-owned or –controlled corporation, the penalty shall be imposed on the president, manager, and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission of the offense.

SECTION 3. *Liabilities Under Section 2, Rule II hereof.* – A person found by final judgment to have violated Section 2, Rule II hereof, shall be meted the penalty of *reclusion temporal* or a fine ranging from Fifty Thousand Pesos (P 50,000.00) to One Hundred Thousand Pesos (P 100,000.00) or both, at the discretion of the court.

- (a) If the offense is committed by, or in connivance with, an officer or employee of the power company, utility to cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company and from holding any public office.
- (b) If, in committing any of the acts enumerated in Section 2, Rule II hereof, any of the other acts enumerated is also committed, then the penalty next higher in degree as provided herein shall be imposed.

- (c) If, in committing any of the acts enumerated in Section 2, Rule II hereof, any of the other acts enumerated is also committed by, or in connivance with an officer or employee of an electric utility concerned, such officer or employee shall, upon conviction, be punished with a penalty of one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company. Likewise, the utility concerned which shall have knowingly permitted or having knowledge of its commission shall have failed to prevent the same, or was otherwise guilty of negligence in connection with the commission thereof, shall be made to pay a fine not exceeding triple the amount of the “differential billing”, subject to the discretion of the courts.

- (d) If the violation is committed by a partnership, firm, corporation, association, or any legal entity, including a government-owned or –controlled corporation, the penalty shall be imposed on the president, manager and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission of the offense.

## **RULE VII BILLINGS AND SURCHARGES**

SECTION 1. *Testing of Watt-hour Meter Standard Equipment.* – The NPC, NEA, and all electric utilities shall submit all their working watt-hour meter standard equipment (which are used in the testing of their respective consumers’ watt-hour meters) for testing and sealing by the ERB within thirty (30) days following the publication of this Implementing Rules and Regulations and every year thereafter.

The NEA shall likewise furnish the ERB, within the same period above prescribed, with

copies of the test reports on the calibration of the watt-hour meter standard equipment of all the electric cooperatives.

SECTION 2. *Testing of Meters.* – All electric utilities and cooperatives, as the case may be, shall cause the calibration of the meters of their respective customers at least once every two (2) years.

The said utilities and cooperatives shall likewise furnish the ERB with copies of the test reports within thirty (30) days after each calibration.

SECTION 3. *Computation of the Differential Billing.* – The differential billing shall be determined by multiplying the unbilled consumption in kilowatt-hour, the period covered by the differential billing and the current rate of electricity at the time of apprehension.

SECTION 4. *Computation of the Unbilled Consumption in Kilowatt-hour.* – The unbilled consumption in kilowatt-hour may be computed by using the following methodologies:

4.1. For cases falling under paragraph (a), (e), (f), and (g), Section 1, Rule III hereof, the following methodologies shall be used:

- (a) The estimated monthly consumption as per report of load inspection conducted during the time of discovery;
- (b) The highest recorded monthly consumption with the five-year period preceding the time of the discovery;
- (c) The higher consumption between the average consumption before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery;

(d) The highest recorded monthly consumption within four (4) months after the time of the discovery.

4.2. For cases falling under paragraphs (b), (c), and (d), Section 1, Rule III hereof, the following methodologies shall be used:

- (a) The result of the ERB test during the time of discovery;
- (b) The higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery;
- (c) The estimated monthly consumption as per report of load inspection conducted during the time of discovery;
- (d) The highest recorded monthly consumption within four (4) months after the time of the discovery; or
- (e) The highest recorded monthly consumption within the five-year period preceding the time of discovery.

4.3 For cases falling under paragraph (h), Section 1, Rule II hereof, any of the foregoing methodologies may be used, whichever is applicable.

SECTION 5. *Period to be Recovered.* – In determining the period to be recovered under the differential billing, the following shall be considered:

- (a) When there was a change in the customer's connection, such as change of meter, change of seal or reconnection, or replacement of parts, the period to be recovered under the differential billing shall be reckoned from the time of the last inspection;

(b) In the absence thereof, the period to be recovered under the differential billing shall start from the time the electric service of the person concerned recorded an abrupt or abnormal drop in consumption; or

In the absence of both, a maximum of sixty (60) billing months, up to the time of the discovery may be used as basis for the computation: *Provided, however,* That if the person concerned presents adequate and indubitable proof showing that the period to be recovered by the differential billing is less than sixty (60) billing months, the utility or cooperative may recompute the amount of the differential billing based on the established period for recovery.

The period to be used shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

In cases where the affected period is less than one (1) year, the utility or cooperative may be allowed to compute for the differential billing using one (1) year as the minimum basis for computation.

**SECTION 6. *Discovery of Prima Facie Evidence.*** – The electric utility or rural electric cooperative, upon discovery of any of the circumstances mentioned in Rule II hereof, shall notify in writing the owner/occupant of the house or establishment concerned or someone of suitable age and discretion residing therein and acting in behalf of the owner/occupant of the incident.

In case the apprehension is witnessed by an officer of the law and not by an ERB authorized representative, the tampered electric meter subject of the offense must be placed in a suitable container, properly identified and sealed, and shall be opened only for testing in the ERB's meter laboratory by the duly authorized representative of the Board.

**SECTION 7. *Inspection Report.*** – An Inspection Report must be accomplished

by the utility or cooperative concerned after every inspection, monitoring of meter installation or apprehension, indicating the following:

- (a) Date and time of the inspection;
- (b) Condition of the meters, instrument, transformers and metering installations;
- (c) Changes made with the connections during the time of the inspection;
- (d) Replacement made on the metering installations, if there is any; and
- (e) Signature over the printed name of the consumer or his duly authorized representative.

The accomplished Inspection Report shall be attested to by the authorized ERB representative or by the officer of the law, as the case may be.

The original copy of the Inspection Report shall be kept by the electric utility or electric cooperative concerned and shall not be destroyed without prior authority from the ERB. A duplicate of the said report shall likewise be furnished to the owner/occupant of the establishment concerned or someone of suitable age and discretion residing therein and acting in behalf of the owner/occupant.

**SECTION 8. *Imposition of Surcharges.*** – An electric utility or rural electric cooperative may impose surcharges in addition to the value of electricity pilfered, on the bills of any consumer apprehended for tampering with his electric meter/metering facility installed on his premises, as well as other violations of contract like direct connection, use of jumper and other means of illicit usage of electricity found installed in the premises of the consumer. The surcharge for the violation of contract shall be collected from and paid by the consumer concerned as follows:

- (a) First apprehension – twenty-five percent (25%) of the current bill;
- (b) Second apprehension – fifty percent (50%) of the current bill;
- (c) Third and subsequent apprehensions – one hundred percent (100%) of the current bill.

The electric utility or rural electric cooperative is authorized to discontinue electric service in case the consumer is in arrears in the payment of the above-imposed surcharges.

**RULE VIII  
ISSUANCE OF RESTRAINING ORDERS OR  
WRITS OF INJUNCTION**

SECTION 1. *Issuance of Writ of the Injunction.* – Unless there is a *prima facie* evidence that the disconnection was made evident bad faith or grave abuse of authority, no writ of injunction or restraining order shall be issued by any court against any utility or cooperative exercising the right and authority to disconnect electric service as provided in these Rules.

SECTION 2. *Filing of Bond/Counterbond.* – A writ of injunction or restraining order issued by a court in the absence of evident bad faith or grave abuse of authority on the part of the utility or cooperative concerned shall be effective only when the affected person/consumer files a bond with the court in the form of cash or cashier’s check equivalent to the differential billing, penalties and other charges in cases of illegal use of electricity. Such writ of injunction or restraining order shall automatically be refused or, if already granted, shall be dissolved upon the filing by the utility or cooperative concerned of a counterbond similar in form and amount as that above required.

SECTION 3. *Report to the Supreme Court.* – Whenever a writ of injunction or restraining order is granted, the court which

issued the same shall submit a report to the Supreme Court within ten (10) days from its issuance, setting forth in detail the grounds or reasons therefor.

**RULE IX  
RATIONALIZATION OF SYSTEM LOSS**

SECTION 1. *Caps on Recoverable System Loss allowed to Private Electric Utilities.* – The maximum rate of system loss that the utility can pass on to its customers shall be as follows:

- (1) Fourteen and a half percent (14 1/2 %) effective on February 1996 billing.
- (2) Thirteen and one fourth percent (13 1/4%) effective on February 1997 billing.
- (3) Eleven and three fourths percent (11 3/4%) effective on February 1998 billing.
- (4) Nine and a half percent (9 1/2%) effective on February 1999 billing.

SECTION 2. *Automatic Cost Adjustment Formula.* – Each and every utility shall file with the ERB, on or before September 30, 1995, an application for approval of an amended Generation Charge or Power Cost Adjustment formula that would reflect the new system loss cap to be included in its schedule of rates.

The automatic cost adjustment clause of every utility shall be guided by the following formula:

Generation Charge

Subsidizing consumption shall be charged a generation charge per kWh equal to:

$$\frac{A}{B-(C+D)} \quad \times \quad \frac{1}{1-FT} \quad - E$$



Where:

A	=	Cost of electricity purchased and generated for the previous month less revenue from subsidized kWh on generation charge as applicable
B	=	Total kWh purchased and generated for the previous month
C	=	The actual system loss but not to exceed the maximum recoverable rate of system loss in kWh plus actual company use in kWh but not to exceed 1% of total kWh purchased and generated
D	=	kWh consumed by subsidized consumers
E	=	Applicable base cost of the amount incorporated into their basic rate per kWh
FT	=	Franchise tax rate

SECTION 3. *Fixing the Level and Effectivity of the New System Loss for Utility.* – Each and every utility shall file with the ERB, before the end of the fourth year following the effectivity of these Rules, an application for the purpose of determining the following:

- (a) Whether the caps fixed shall be reduced further which shall in no case be lower than nine percent (9%) after taking into account the viability of the private electric utilities and the interest of the consumers;
- (b) The date of the effectivity of the new caps; and
- (c) The permissible levels of recovery of system loss in areas that may be added to the franchise area of the private electric utility after the date of effectivity of R.A. No. 7832.

SECTION 4. *Caps on System Loss Allowed to Rural Electric Cooperatives.* – The maximum rate of system loss that the cooperative can pass on to its customers shall be as follows:

- (a) Twenty-two percent (22%) effective on February 1996 billing.

- (b) Twenty percent (20%) effective on February 1997 billing.
- (c) Eighteen percent (18%) effective on February 1998 billing.
- (d) Sixteen percent (16%) effective on February 1999 billing.
- (e) Fourteen percent (14%) effective on February 2000 billing.

SECTION 5. *Automatic Cost Adjustment Formula.* – Each and every cooperative shall file with the ERB, on or before September 30, 1995, an application for approval of an amended Purchased Power Adjustment Clause that would reflect the new system loss cap to be included in its schedule of rates.

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B - (C + D)} - E$$

Where:

A	=	Cost of electricity purchased and generated for the previous month
B	=	Total kWh purchased and generated for the previous month
C	=	The actual system loss but not to exceed the maximum recoverable rate of system loss in kWh plus actual company use in kWh but not to exceed 1% of total kWh purchased and generated
D	=	kWh consumed by subsidized consumers
E	=	Applicable base cost of power equal to the amount incorporated into their basic rate per kWh.

SECTION 6. *Fixing the Level and Effectivity of the New System Loss Cap.* – Each and every cooperative shall file with the ERB, before the end of the fifth year following the effectivity of these Rules, to determine the following:

- (a) Whether the caps fixed shall be reduced further which shall in no case be lower than nine percent (9%) after taking into account the viability of the electric cooperatives and the interest of the consumers;
- (b) The date fixed for the effectivity of the new caps; and
- (c) The permissible levels of recovery of systems loss in areas that may be added in the area of coverage of the rural electric cooperative after the date of the effectivity of R.A. No. 7832.

SECTION 7. *Authority of the Energy Regulatory Board.* – Nothing in this Rule shall impair the authority of the ERB to reduce or phase out technical or design losses as a component of system losses.

**RULE X  
RECOVERY OF PILFERAGE LOSSES**

SECTION 1. *Submission of Report.* – A utility or cooperative which recovers any amount of pilferage losses shall submit to the ERB, within thirty (30) days from said recovery, a written report under oath, which shall contain the following:

- (a) The fact of recovery
- (b) The date of recovery
- (c) The name of consumer concerned
- (d) The amounts recovered including the amounts resulting from compromise agreement and surcharges imposed, if any
- (e) The amount of pilferage loss claimed
- (f) The explanation for the failure to recover the whole amount claimed
- (g) Itemized expenses incurred, if there is any
- (h) The amount passed to the consumer

The utility or cooperative shall not accept payment from the consumer during the pendency of the case for the recovery of pilferage loss, unless so provided in a compromise agreement duly executed by the parties and approved by the court.

SECTION 2. The full amount recovered by the utility or cooperative under the preceding section shall be reflected as a reduction in the customer’s electric bill through the automatic cost adjustment formula abovementioned, the application of which shall be verified and confirmed by the Board through an Order.

**RULE XI  
INFORMATION DISSEMINATION**

SECTION 1. *Information Dissemination.* – The private electric utilities, the rural electric cooperatives, the NPC, and the National Electrification Administration (NEA) shall, in cooperation with each other, undertake vigorous campaign to inform their consumers of the provisions of the Implementing Rules and Regulations, within sixty (60) days from the effectivity thereof and at least once a year thereafter, and to incorporate a faithful condensation of said provisions in the contract with new consumers.

**RULE XII  
REPEAL AND SEPARABILITY**

SECTION 1. *Repeal and Separability.* – All existing rules, regulations or order or any parts thereof inconsistent with these Rules are hereby repealed, amended or modified accordingly. If any part or provision of these Rules or declared unconstitutional or illegal, the other parts or provisions shall remain valid.

**RULE XIII  
EFFECTIVITY**

SECTION 1. *Effectivity.* – These Rules shall take effect fifteen (15) days after its publication in two newspapers of general circulation in the country.

Pasig City, July 7, 1995

**REX V. TANTIONGCO**

Chairman

**OSCAR E. ALA**

Member

**BAYANI V. FAYLONA**

Member

**ARNALDO P. BALDONADO**

Member

**EDWARD C. CASTAÑEDA**

Member

**ERB RESOLUTION NO. 95-21**

STANDARD RULES AND REGULATIONS GOVERNING THE OPERATION OF ELECTRIC POWER SERVICES

---

**WHEREAS**, the rules and regulations governing the operation of public services, particularly the electric power services are embodied in Revised Order No. 1 which was approved by the then Public Service Commission (this Board's predecessor office) way back on November 27, 1941;

**WHEREAS**, economic conditions have, since that time, changed, not to mention the technological developments that have occurred in the electric power industry;

**WHEREAS**, this Board has considered the advisability of revising the said rules and regulations to make them more responsive to current conditions and needs in the said industry;

**NOW, THEREFORE**, be it resolved, AS THIS BOARD HEREBY RESOLVES, to amend Revised Order No. 1, particularly the rules and regulations therein pertaining to the operation of electric power services, and to prescribe, AS THIS BOARD HEREBY PRESCRIBES, the following:

SECTION 1. *Title.* – This Resolution shall be known as the *Standard Rules and Regulations Governing the Operation of Electrical Power Services.*

SECTION 2. *Applicability.* – The following rules and regulations shall cover all electric power utilities under the supervision, control and jurisdiction of the Energy Regulatory Board, as applicable.

The term "electric utility" shall include every person, whether natural or juridical, their lessees, trustees or receivers, as well as municipalities, provinces and cities engaged in the operation of electric power service in the Philippines, *for hire or compensation*, with general or limited clientele, whether permanent or occasional.

SECTION 3. *Observance.* – Every electric power utility shall observe and comply strictly with all the terms and conditions prescribed in its Certificate of Public Convenience and Necessity (CPCN), rules and regulations, memoranda, orders and circulars of the Board, the laws of the Philippines, provincial resolutions, city or municipal ordinances and any other rules or regulations issued by any competent authority, and in case of a grantee of franchise, with the terms and conditions thereof.

SECTION 4. *Service.* – Every electric power utility under the supervision, control, and jurisdiction of the Board shall operate, maintain, and provide safe, reliable, adequate, efficient and continuous electric service.

SECTION 5. *Information and Assistance to Customers.* – Every electric utility shall, upon request, give its customers, copy furnished ERB, all information and assistance pertaining to its service in order to provide said customers reliable, efficient and economical service.

SECTION 6. *Service Connection.* – It shall be mandatory for the electric utility to extend electric service after customer's full compliance with the electric utility's requirements.

The connection of the electric utility's service lines and meters with the customer's premises shall be free of charge. The point of service connection shall be designated upon agreement by the electric utility and the customer.

The relationship of the electric utility and the consumers shall be governed by an application/service contract containing the terms and conditions duly approved by the Board.

It shall be unlawful for any electric utility to give undue preference or make unjust discrimination in its service.

SECTION 7. *Commercial or Business Name.* – No electric utility shall adopt a commercial or business name without first securing approval of the Board.

SECTION 8. *Authorized Equipment.* – Every electric utility shall install in its plant only the generating or producing unit(s) and/or distribution equipment authorized in its CPCN or those that may be subsequently authorized by the Board.

No electric utility shall increase, substitute or withdraw from the service any of its authorized equipment and/or machinery without the prior authority from the Board.

SECTION 9. *Fictitious Registration of Equipment.* – It shall be unlawful for any

electric utility to cause, allow or in any other manner help or consent to the registration in its name, fictitiously, surreptitiously or otherwise of any or in any other manner, help or consent to the operation of said equipment under its CPCN.

SECTION 10. *Construction, Operation and Maintenance of Electric Plant.* – The electric plant which includes:

- (a) Power Plant
- (b) Transmission and Distribution Lines
- (c) Substations
- (d) Overhead system, poles, lines, transformers, etc.
- (e) Underground systems, including power and communication cable manholes, conduits, etc.
- (f) Street Lighting System
- (g) Service wires and attachments
- (h) Meters and instruments
- (i) Control and communication facilities (SCADA)

shall be constructed, installed, operated and maintained in accordance with the provisions of the *Philippine Electrical Code* and the rules and regulations that may be issued by the Board in relation thereto. In the absence of applicable provisions in the *Philippine Electrical Code*, the provisions of the U.S. Bureau of Standard National Electrical Safety Code shall apply.

SECTION 11. *Equipment at Generating Station.* – Every electric utility shall install and maintain at its generating station(s) the following:

- (1) Watt-hour meter(s) to record the kilowatt-hours generated by each generating

station.

- (2) Watt-hour meter(s) to record the kilowatt-hours purchased from other sources.
- (3) Indicating or graphic wattmeters to indicate or record the load in kilowatts of each generating unit at any particular time.
- (4) Either indicating or graphic wattmeters to indicate or record the load in kilowatts at any particular time of the territory served.
- (5) Voltmeter(s) to indicate the potentials of the buses. The voltmeter(s) installed in Alternating Current (AC) stations shall be so connected as to indicate the potential on each phase.
- (6) Ammeter(s) to indicate the current in each generating unit and each feeder. The ammeter(s) installed at AC stations shall be so connected as to indicate the current in each phase.
- (7) Frequency meter(s) to indicate the frequency in AC stations of more than 100 kw capacity.
- (8) Power factor meter or VAR meter for AC stations with generating units of over 100 KVA capacity each.
- (9) Automatic voltage regulator for central stations of 251 KW capacity or more.
- (10) Over current relay, under/over voltage relay, synchronizing device, reverse power relay and under/over frequency relay.
- (11) And other instruments, safety devices and controls that may be necessary to determine the operating characteristics and for voltage control and safe operation of the plant.

SECTION 12. *Equipment at Substations.* – Every electric utility taking power from a transmission line shall install in its authorized territory at the receiving end:

- (1) Watt-hour meter(s) to register the total kilowatt-hours delivered.
- (2) Indicating or graphic wattmeter or meters to indicate or record the load.
- (3) Voltmeter(s) to indicate the potentials of each phase of the circuit(s) feeding the territory.
- (4) Ammeter(s) to indicate the current in each phase of the circuit(s).
- (5) And other instruments, safety control and devices that may be necessary to determine the demand characteristics and the voltage control in the authorized territory.

SECTION 13. *Testing of Station and Substation Meters.* – All station and substation meters and instruments used for billing purposes shall be inspected by the authorized representative of the Board at least once every two years for testing purposes.

Each instrument shall at all times be accompanied by a test report issued by the Board showing the findings and corrections made at various readings and the date of last calibration.

SECTION 14. *Watt-hour Meter Standard.* – Every electric utility furnishing metered electric service shall maintain, to check customer's watt-hour meter, at least one watt-hour meter standard which shall be calibrated by the Board at least once a year.

SECTION 15. *Portable Indicating and Recording Voltmeters.* – Every electric utility shall provide itself with at least one portable indicating voltmeter. Utilities serving more than 500 customers further required to have

at least one recording voltmeter which shall be placed in continuous service at its power plant or office.

SECTION 16. (a) *Nominal Voltage and Voltage Regulation.* – Every electric utility shall adopt and file with this Board a standard voltage as its nominal voltage for its entire secondary distribution systems. The voltage across the main service entrance switch, as installed for each customer or group of customers, shall be maintained as follows:

- (1) For service rendered under a lighting contract or primarily for lighting purposes, between sunset and 11:00 o' clock p.m., the variation in voltage shall not be more than five percent (5%) plus or minus of the nominal voltage adopted. The voltage regulation shall not exceed 6%.
- (2) For service rendered under a power contract or primarily for power purposes, the voltage variation shall not exceed ten percent (10%) above or below the nominal voltage at any time when the service furnished.
- (3) A greater variation of voltage than that specified above may be allowed in case of emergency service or in a certain area where the customers are widely scattered and the business done does not, in the judgment of the Board, justify close voltage regulation.

(b) *Exceptions.* – Variations in voltage in excess of those specified, caused (1) by the operation of power apparatus on customer's premises which necessarily requires large starting current, (2) by the action of the elements, and (3) infrequent and unavoidable fluctuation of short duration due to station operation, shall not be considered a violation of this section.

SECTION 17. *Standard Frequency and Allowable Variation.* – Every electric utility supplying AC shall adopt the standard frequency of sixty (60) Hertz and shall maintain said frequency reasonably constant so that its variation shall not exceed one (1) Hertz above or below the standard frequency, at all times. Infrequent and unavoidable fluctuations of short duration due to station operation or caused by the elements or by frequency variation caused by source(s) not within the control of the utility shall not be considered a violation of this Section.

SECTION 18. *Log Book.* – (a) E v e r y electric utility shall keep a log book in its generating stations and shall record therein:

- (1) Time of starting and stopping of each generating unit.
- (2) Time of switching on and off of each feeder.
- (3) Daily reading of watt-hour meter.
- (4) At least quarter hourly reading of wattmeters, voltmeters and ammeters during the three consecutive hours of heavy load each day, and at least hourly readings during the remainder of the day; also the time and magnitude of station peak load each day.
- (5) Interruptions of service, indicating the time, duration, extent, and cause of each interruptions.
- (6) The daily consumption of lubricating oil and fuel (bunker fuel oil; special fuel oil; ADO etc.). Fuel waste shall likewise be indicated in the logbook.

(b) Every electric utility taking power from a transmission line shall keep a log book at its receiving end (substation) showing:

- (1) Time of switching on and off of each feeder.
- (2) Daily readings of watt-hour meter(s) to show kilowatt-hours delivered.
- (3) At least quarter-hourly reading of load during the three consecutive hours of heaviest load each day, and at least hourly reading during the remainder of the day; also the time and magnitude of maximum demand.
- (4) At least quarter-hourly readings of the voltmeters and ammeters of each feeder during the three consecutive hours of heavy demand each day and at least hourly readings during the remainder of the day.
- (5) Interruptions of service, indicating the time, duration, extent, and cause of each interruption.
- (6) Log book shall be signed by the person in charge and shall not be removed from the switchboard site or room.

SECTION 19. *Poles, Sag of Wires.* – No pole located on or near a public place shall have a one-way sweep exceeding three percent (3%) of its total length and all horizontal wires attached to it shall be pulled up so that their sag shall not be greater than those allowed by the *Philippine Electrical Code* (three percent (3%) of the distance between poles).

SECTION 20. *Identification of Poles, Tower, etc.* – Poles, towers, structures, and transformers shall be marked and numbered by the electric utility to facilitate identification.

SECTION 21. *Advice to Customers on Rates Applicable.* – A copy of the rate schedule and the terms and conditions of service shall be furnished to the new customers. Existing customers shall be informed of any changes in new rates through print/media. Where

there are two or more authorized schedules of rates applicable to a customer's condition, the electric utility should accordingly advise in writing said customer and apply the most advantageous schedule of rates.

SECTION 22. *Deposits and Charges.* – All bill deposit from all residential and non-residential customers to guarantee payment of bills shall be required of new and/or additional service. The amount of the bill deposit shall be equivalent to the estimated monthly billing.

A meter deposit equivalent to one-half (½) of the current cost of the electric meter and other equipment appurtenant thereto shall be required.

The bill and meter deposits which shall be refunded within one month from termination of service shall bear interest at the rate of ten percent (10%) per annum, refundable on customer's request upon termination of service provided that the metering facilities are returned in good condition, and all accounts in the name of the customer shall have been paid. The amount of refund shall be based on the customer's copy of the receipts or the utility's record thereof.

SECTION 23. *Extension of Lines and Facilities.* – In the event it would require, in order to serve a prospective customer, to extend lines and/or install additional facilities other than service drop, the electric utility as franchise holder shall extend the lines or install the facilities at its own expense, inasmuch as said assets will form part of its rate base.

SECTION 24. *Location and Maintenance of Electric Utility's Equipment.* – The electric utility shall have the right, if necessary to construct its poles, lines and circuits and to place its transformers and other apparatus on the property or within the buildings of the customer, at a point or points convenient for such purpose, and the customer shall further grant the right to the use of suitable space for the installation of necessary metering

equipment in order that such equipment will be protected from damage by the elements, or through the negligence or deliberate acts of any person(s). When the delivery of energy for separate buildings or premises is desired/necessary, a separate contract between customers and utility shall be required for each point of delivery.

In case the public utility, pursuant to this section, erects poles and lines on the property of a customer in order to be able to service him, it shall, upon payment of just compensation to the latter, also have the right to connect to said poles and lines any neighbor or neighbors of said customer, who may thereafter also apply for service connections and who cannot otherwise be connected or reached.

**SECTION 25. *Service Drop.*** – An electric service drop is defined as the wires with the necessary supporting structure between the distribution lines of the electric utility and the service entrance.

All connections and disconnections of service shall be made by the electric utility.

Only one service drop shall be installed for each individual building, except as allowed in the *Philippine Electrical Code*, duly certified by a government authority.

The service drop shall normally be connected at the electric utility's pole carrying electric service facilities nearest the applicants premises and shall not exceed thirty (30) meters in length. Length of service drop is defined as the distance from the pole to the nearest point of attachment or connection.

The service bracket shall be supplied and installed by the electric utility in all cases except where it is to be attached to a building of masonry construction. In case of attachment to masonry construction, the contractor shall secure the bracket which is issued by the electric utility and install it

during the process of construction.

**SECTION 26. *Service Entrance.*** – Service entrance is defined as that portion of the customer's wiring including all necessary conduits, cables and accessories which extends from the customer's main entrance switch and/or electric utility's metering equipment to and including the point of attachment to the electric utility's service drop on the outside of the building. It is preferred that there be only one service entrance for each building.

If service entrance cable is not used, service entrance conductors shall be contained and be properly installed in weatherproof armored cable, rigid conduit or type BXL flexible conduit.

The outside terminal of the customer's service entrance must be located so as to enable connection to the service drop at a point nearest to the electric utility's existing or proposed electric service facilities.

Service entrance (cable or conduit) shall be exposed on the outside of the building and shall be in one continuous run from the service drop terminal to the meter, except for large installations whose single or combined kilowatt demand has been determined by the electric utility to require installation of instrument transformers, in which case the service entrance may be concealed. The instrument transformers and metering channel, which are part of the metering facilities, are to be furnished by the electric utility. The line side of the service entrance must be separated from the load side as abovementioned. All conductors in the line side of the service entrance including the neutral wire shall be installed in one conduit, rigid or flexible (type BXL only). The service entrance shall terminate near the point of connection to the service drop with no less than two (2) feet of wire extended outside the weatherhead.



In cases of “accessoria” wiring, the service entrance cable or conduit shall be installed in the same manner as for other building particularly emphasizing the fact that the entrance cable or conduit be exposed or seal-type “accessoria” boxes without fuses shall be used for each separate service connection or group of service connections.

Proper fittings shall be used in joining the cable or conduit to the junction box.

The electric utility shall not require existing open wiring service entrance to be changed or replaced with service entrance cable or conduit installation except when there is remodeling of existing installation and/or in cases of proven current diversion in the customer’s premises.

Service entrance shall meet the requirements of the *Philippine Electrical Code* (PEC) or local and national government ordinances.

SECTION 27. *Service Switches or Breakers.* – A safety switch or circuit breaker duly approved by the authorized government agency must be installed on the load side of the meter. All safety switches must be externally operated with fuses electrically “dead” when the switch is in the “off” position.

SECTION 28. *Underground Service.* –

- (a) Residential – Underground residential service, including the pole on which said service is terminated, shall be provided, installed and maintained by the customers in accordance with the specification(s) prescribed by the PEC.
- (b) Commercial and Industrial – Installation of any underground facilities shall be subject to the prior agreement between the customer and the electric utility.

SECTION 29. *Grounding.* – In case of three (3)-wire single-phase service, the neutral conductor of each service entrance shall always be grounded to an existing

underground water system in accordance with the PEC. Driven grounds or their equivalent shall be accepted only where an underground water system is not available in or near any wired building on the premises.

SECTION 30. *Meter Installations.* – All metering equipment shall be furnished and installed by the electric utility. Current transformer cabinets and gang mounting channels where required will be furnished by the electric utility and installed by the applicant at a location specified by the electric utility. The applicant shall furnish and install meter boards, where required.

The meter must be installed in a clean place free from vibration and where it will be easily accessible for reading and testing. Under no condition should meters be located behind doors or where they can be easily broken or jarred by moving furniture or equipment. Meters shall be located on the outside wall of the building or private pole and shall not be more than three (3) meters nor less than 1.52 meters mounting height from the surface on which one would stand to repair or inspect the meter.

Generally, meters shall be installed on the ground floor in suitable space and on a suitable mounting for large commercial and apartment buildings. However, upon request by the customer, the electric utility may allow location of meter (s) other than the ground floor provided that meter(s) are to be installed and located at a common place accessible to electric utility’s personnel for inspection, reading and maintenance purpose at anytime and a main check meter installed at a location specified by the electric utility to measure the total electric consumption of the building. All service entrance and other electrical facilities after the main check meter, except electric utility meters, shall be owned and maintained by the customer. Space and mounting shall be adequate to accommodate all metering facilities. Individual cutouts and /or switches shall be at least one (1) meter of clear space in front of the meter(s). The electric utility shall

be consulted prior to the wiring installation in large buildings.

The applicant shall secure from the electric utility upon presentation of necessary Electrical Wiring Permit, detachable meter sockets. Meter sockets shall be installed in accordance with electric utility specifications. When the demand of an installation is more than forty (40) kilowatts or where service entrance is larger than AWG 4/0 or 107.22 mm<sup>2</sup> wire, the meter installation may include instrument transformer furnished by the electric utility. For all installations of forty (40) kilowatts and over, the electric utility shall be consulted before construction is started.

SECTION 31. *Applicability of the Philippine Electrical Code.* – The foregoing provisions of Section 25 to 30 should not be in conflict with existing provisions of the *Philippine Electrical Code* otherwise the latter rules shall apply.

SECTION 32. *General Information on Metering.* – Every electric utility shall inform its customers of the manner in which meters are read, either by printing on its bills for each service, a description of the method used in reading meters, by distributing booklets describing such method, or in any other suitable manner.

Each service meter shall indicate clearly the units of service for which charge is made to the customer. In case the dial reading of the meter must be multiplied by a constant to obtain the units of service, the constant to be applied shall be clearly marked on the face or dial of the meter. Where the quantity of service is determined by calculation from the reading of the meter, the electric utility shall upon request supply the customer with such information as will show clearly the method of determining the units of service rendered.

Every electric utility shall instruct its meter reader when reading periodically the meter installed in the premises of a customer, to leave in such premises a card, showing

thereon the date of reading, the reading made and the total consumption expressed in units of service used, as read by the meter reader, and the signature or initials of the meter reader.

The meter and metering equipment are the sole property of the electric utility and any changes in their location or arrangements shall be made by the electric utility.

SECTION 33. *Testing and Sealing of Meter by the Board.* – No meter shall be placed in service unless it has been tested, certified and sealed by the Board.

The ERB seal attached to the meter by the Board is a warranty (1) that the meter is an acceptable or accepted type and (2) that it operates within the allowable limits of tolerance.

SECTION 34. *Test of Customer's Meter by the Electric Utility.* – Every electric utility shall, upon request of a customer, make a test free of charge of the accuracy of the meter installed in his premises. A written report giving the result of such test shall be furnished the customer and the Board.

SECTION 35. *Watt-hour Meter Accuracy Requirements.* –

- (a) No watt-hour meter that has an incorrect register constant, gear ratio, register ratio or dial train, or that be allowed to remain in service without adjustment and correction. Register constant is the factor used in conjunction with the register reading in order to ascertain the total amount of electrical energy in kilowatt-hours that has passed through the meter. Watt-hour constant is the registration of one revolution of the rotating element expressed in watt-hours. Gear ratio is the number of revolutions to the rotating element for one revolution of the first dial pointer. Register ratio is the number of revolutions of the wheel meshing with the worm or pinion on the rotating

element for one revolution of the first dial pointer. "Dial train" is the term applied to all the gear wheels and pinions used to interconnect the dial pointers. A meter in service "creeps" when, with all load wires disconnected, the moving element makes one complete rotation in twenty minutes or less.

- (b) All watt-hour meters before being placed in service, must be adjusted as closely as possible to the condition of zero error. The tolerance of plus or minus two percent ( $\pm 2\%$ ) is hereby fixed to allow for necessary variations, but watt-hour meters shall not be adjusted merely to be within this tolerance.
- (c) No watt-hour meter that has an error in registration of more than plus or minus three percent ( $\pm 3\%$ ) at any load shall be allowed to remain in service.

SECTION 36. *Determination of Average Error.* – In tests made by the Board or the electric utility, the average error of a meter shall be determined by the following method:

$$E_a = 0.3E_{LL} + 0.7E_{FL}$$

Where  $E_a$  is the average Error,  $E_{LL}$  is the error at light load,  $E_{FL}$  is the error at full load.

*Provided, however,* That at the time request of the customer or in referee cases, this method may be modified by admitting tests at a third load, if, and when in the opinion of the Board, such load is more representative of the ordinary use of the meter, in which case, the average error shall be determined as follows:

Take one-fifth (1/5) of the algebraic sum of (1) error at the light load, (2) three times the error at normal load, (3) the error of full load.

In both methods, light load shall be taken from five (5) to ten (10) percent of the rated test amperes of the meter, and full load, not less than sixty percent (60%) nor more than

one hundred percent (100%) of the rated test amperes of the meter.

For normal load the following percentage of the several classes of full-connected installations may be used:

	Percent
Residence and apartment lighting	25
Elevator Service	40
Factories (individual drive), theaters, club, hallways, entrance, and general store lighting	60
Restaurants, pumps, air compressors, ice machines, and moving picture theaters	70
Sign and window lighting, blowers and battery charging	100

SECTION 37. *Record of Meter.* – Every electric utility shall keep an adequate record of each meter showing (1) make, type and identification marks and/or number of meter, (2) names and addresses of customers, dates when meter installed or removed, (3) adjustment or repair made, and (4) Board certification dates.

SECTION 38. *Register of Assets.* – Every electric utility shall keep a comprehensive register of assets, indicating installation date, cost, condition and refurbishment.

SECTION 39. *Schedule of Rates.* – Every electric utility shall be strictly governed in its charges by the schedule of rates prescribed by the Board and shall not change, alter, or in any manner modify the same without prior authority of the Board and shall post a copy thereof in a conspicuous place at its office.

SECTION 40. *Service Charges.* – The service charges to be collected by the electric utility shall be subject to the prior approval of the Board.

SECTION 41. *Use of Energy by Customers.* – The rate schedule for electric energy of each electric utility are classified by the character of use of such energy.

No addition to the load connected to the service connection, transformers, meters

and devices supplied by the electric utility for each customer having a definite capacity, shall be allowed *except by written consent* of the electric utility. This restriction only applies to utilities whose terms and conditions of service contract forms between customer and operator imposes no such restriction.

SECTION 42. *Bills for Metered and Flat Rate Service.* – Bills to metered service customers shall be rendered at reasonably regular intervals and shall show at least the date upon which the meter was last read, the reading of the meter on that date, the number and kinds of units supplied, reference to the schedule of rates applicable and the amount of the bill.

Bills to flat rate service customers shall be rendered at reasonably regular intervals and shall show the period for which the bill is rendered, reference to the schedule of rates applicable and the amount of the bill. The number and kinds of units for which a flat rate bill is rendered shall also be known on the bill.

There shall be shown on the bill such additional factors other than those contained in the schedule of rates, as may be necessary in computing the bill. It shall be indicated on each bill that copies of the schedules of rates applicable will be furnished by the electric utility upon request.

SECTION 43. *Payment of Bills.* – Every electric utility may require that bills for service may be paid within a specified time after rendition. When the billing period covers a month or more, the minimum time allowed will be *ten (10) days* unless a longer period is specified and upon expiration of the specified time, service may be discontinued for the non-payment bills.

Bills will be rendered by the electric utility to the customer monthly in accordance with the applicable rate schedule. Said bills are payable to collectors, collection office of the area where the customer resides or at its authorized banks within ten (10) days after

customer's receipt of the said bills, unless a longer period is allowed. The word "month" as used in herein and in the rate schedule is hereby defined to be the elapsed time between two succeeding meter readings approximately (30) days apart. In the event of stoppage or the failure of any meter to register the full amount of energy consumed, the customer shall be billed for such period on an estimated consumption based upon his average use of energy for the immediately preceding six-month period of like use or the registration of a check meter subject to the approval of the Board, except when the utility and the customer do not agree on such bill, in which case, the Board shall resolve the same.

SECTION 44. *Receipts.* – Every electric utility operator shall issue to its customers receipts which shall be in the form or model prescribed by the Board: *Provided, however,* That the electric utility operator must submit a sample of said receipts for the approval of the Board before adopting the same in its service.

It shall safely keep the duplicate or office stub of the receipts used and shall not destroy them within five (5) years without authority from the Board.

SECTION 45. *Electric Utility's Liability.* – Every electric utility shall use reasonable diligence in furnishing a regular and uninterrupted supply of energy, but in case such supply should be interrupted or should fail by reason of an act of God, the public enemy, accidents, strikes, riots, legal process, national or local interferences, failure of supply from generation source for any reason or extraordinary repairs/replacements, the electric utility shall not be liable for damages.

The electric utility shall not be liable to the customer for any loss, injury or damage resulting from the customer's use of equipment or from the use of energy of the electric utility from the connections of the electric utility's wires with the customer's wire and appliances, in case of negligence on the part of the customer.

The electric utility shall provide and maintain in proper operative condition the necessary line or service connections, transformers (when same are stipulated by the conditions of the contract between the parties thereto), meters and other apparatus which may be required for the proper measurement of and protection to its service. All such apparatus shall be and remain the property of the electric utility.

**SECTION 46. *Authority to Enter Customer's Premises.*** – The customers should allow the employees and/or representatives of the electric utility to enter their premises for the purpose of inspecting, installing, reading, testing, removing, replacing, or otherwise disposing of its apparatus and property, and/or removing the electric utility's entire property in the event of the termination of the contract for any cause.

Only authorized employees of the electric utility showing proper identification card shall be allowed to make any external adjustments of any meter or any internal or external adjustments of any other pieces of apparatus owned by the electric utility.

**SECTION 47. *Suspension or Change of Service.*** – Every electric utility shall serve notice to the public in advance of any proposed suspension or change to be made in the service that would affect the utilization, efficiency, and/or safety of any installation, appliances, equipment, etc., used by any customer. In case such suspension exceeds twenty-four (24) hours, the utility should first obtain authority therefor from the Board.

**SECTION 48. *Refusal or Discontinuance of Service.*** – An electric utility shall not refuse or discontinue service to an applicant, or customer, who is not in arrears to the electric utility, even though there are unpaid charges due from the premises occupied by the applicant, or customer, on account of unpaid bill of a prior tenant, unless here is evidence of conspiracy between them to defraud the electric utility.

Service may be discontinued for the nonpayment of bills as provided for in Section 43 hereof, provided that a forty eight (48)-hour written notice of such disconnection has been given the customer: *Provided, however,* That disconnections of service shall not be made on Fridays, Saturdays, Sundays and official holidays: *Provided, further,* That if at the moment of disconnection is to be made, the customer tenders payment of the unpaid bill to the agent or employee of the electric utility who is to effect the disconnection, the said agent, or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

The electric utility may discontinue service in case the customer is in arrear(s) in the payment of bill(s). Any such suspension of service shall not terminate the contract between the electric utility and the customer.

In case of arrear(s) in the payment of bill(s), the electric utility may discontinue the service notwithstanding the existence of the customer's deposit with the electric utility, which will serve as guarantee for the payment of future bill(s) after service is reconnected.

**SECTION 49. *Reconnection of Service.*** – The electric utility shall reconnect service after the customer has settled his arrears/obligations with the electric utility and/or complied with government and the electric utility's requirements.

**SECTION 50. *Investigation of Complaints.*** – Every electric utility shall, within twenty-four (24) hours, make a prompt investigation of all complaints referred to them concerning the service.

**SECTION 51. *Investigation, Inspection, Examination and Test.*** – The Board, may at any time, conduct an inspection and investigation of the operation of any electric utility or an examination and test of any equipment operated for electric service. The refusal, obstruction or hindrance by the electric utility

or any of its employees to the investigation or inspection of its service or examination or test of any of its equipment shall constitute a violation hereof.

SECTION 52. *Accident Report.* – Every electric utility shall keep a record, in chronological order, of all accidents that may occur in connection with its operation, their nature, causes and consequences, and the measures taken to avoid their recurrence. A detailed report of all accidents shall be submitted to the Board on or before the tenth (10th) day of each month. Accidents which result in death or physical injuries shall be reported to the Board within twenty four (24) hours from their occurrence.

SECTION 53. *Accounts.* – Every electric utility operator shall keep such accounts, books and other records as are necessary to afford an intelligent understanding of its business. If a uniform system of accounting is prescribed by the Board for the electric industry, the said system shall be observed. Every electric utility shall keep its book of accounts by the double entry method.

SECTION 54. *Depreciation.* – Every electric utility shall set aside annually from its earnings an amount for depreciation purposes which shall be subject to revision by the Board and shall keep said amount in a depreciation fund which shall be spent only in accordance with Commonwealth Act No. 146, as amended, otherwise known as the *Public Service Act*.

The Board shall fix and determine the proper and adequate rates of depreciation of the property of the electric utilities under its jurisdiction which will be observed in a proper and adequate depreciation account to be carried for the protection of stockholders, bondholders or creditors in accordance with such rules, regulations and form of account as the Board may prescribe. Said rates shall be sufficient to provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the

industry. Each electric utility shall conform its depreciation accounts to the rates so determined and fixed.

SECTION 55. *Submission of Monthly Statistics and Annual Report.* – Every electric utility shall submit to the Board on or before the 30th day of each month the statistics on electric power operations and automatic adjustment clause computations (power costs adjustment, fuel cost adjustment, currency exchange rate adjustment and other cost adjustments approved by the Board) together with the supporting documents corresponding to the previous month in accordance with the prescribed form.

Likewise, the electric utility shall file with the Board on or before May 31st of every year a detailed report of its finances and operations corresponding to the previous year, in accordance with the form prescribed by the Board. Said annual report shall be based on audited financial statement.

SECTION 56. *Sworn Statement.* – Each electric utility shall, within thirty (30) days immediately following the date of publication of this “Standard Rules and Regulations Governing the Operation of Electric Utilities” or in the case of a new electric utility, within thirty (30) days after the granting of a CPCN in its favor, submit to the Board the sworn statement required in paragraph (i) of Section 17 of Commonwealth Act No. 146, as amended.

SECTION 57. *Copy of Standard Rules and Regulations Governing the Operation of Electric Utilities.* – Every electric utility under the jurisdiction and control of the Energy Regulatory Board must keep on file in its offices a copy of this Standard Rules and Regulations.

SECTION 58. *Violation.* – Violation of any provision of this Standard Rules and Regulations shall be subject to the penalty which the Board may impose in accordance with law.

SECTION 59. *Repealing Clause.* – This Standard Rules and Regulations supersedes and revokes Public Service Commission’s Revised Order No. 1, adopted on November 27, 1941 and all other rules and regulations inconsistent herewith.

SECTION 60. *Effectivity.* – This Standard Rules and Regulations shall take effect fifteen (15) days after its publication in the *Official Gazette* or in any newspaper of general circulation in the country.

So Ordered.

Pasig, Metro Manila, August 03, 1995

**REX V. TANTIONGCO**  
Chairman

**OSCAR E. ALA**  
Member

**BAYANI V. FAYLONA**  
Member

**ARNALDO P. BALDONADO**  
Member

**EDWARD C. CASTAÑEDA**  
Member

## REPUBLIC ACT NO. 9511

AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES

SECTION 1. *Nature and Scope of Franchise.*  
– Subject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets & Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, system operations, and other activities that are necessary to support the safe and reliable operation of the

transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate repair and refurbish the present nationwide transmission system of the Republic of the Philippines. The Grantee shall continue to operate and maintain the subtransmission system which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in construct, install, finance, improve, expand, rehabilitate and repair the nationwide transmission system and the grid of the Republic of the Philippines, ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines.

SECTION 2. *Terms and Conditions of Franchise.*

– This franchise shall be for a term of fifty (50) years from the date of effectivity of this Act, and is hereby granted under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. During the period of operation of the franchise herein granted, at least sixty per centum (60%) of the capital of the Grantee shall be owned by citizens of the Philippines. The grantee shall comply with the Constitution and applicable laws pertaining to foreign ownership and management of public utilities.

SECTION 3. *Manner of Operation of System or Facilities.*

– The transmission system, grid and related facilities maintained, operated or managed by the Grantee, its successors or assigns, shall be operated and maintained at all times in accordance with industry standards, and it shall be the duty of the Grantee, its successors or assigns, whenever required to do so by the Energy Regulatory Commission (ERC) or its legal successor, to modify, improve and change such system or facilities in such manner and to such extent as the progress in science and improvements in the electric power services may reasonably require.

SECTION 4. *Right of Eminent Domain.*

– Subject to the limitations and procedures prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems which have not yet been disposed by TRANSCO. The Grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That the applicable law on eminent domain shall be observed, particularly, the prerequisites of taking of possession and the determination and payment of just compensation.

SECTION 5. *Right of the Government.*

– A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order, to temporarily take over and operate the transmission system and/or the subtransmission systems operated and maintained by the Grantee, to temporarily suspend the operation of any portion thereof, or the facility in the interest of public safety, security and public welfare, or to authorize the temporary use and operation thereof by any agency of the government upon due compensation to the Grantee for the use of the said transmission system, and subtransmission systems and any portion thereof during the period when they shall be so operated.

SECTION 6. *Sale, Lease, Transfer, Usufruct, etc.*

– The Grantee shall not lease, transfer, grant the usufruct of, or sell this franchise or the rights and privileges acquired hereunder to any person, firm, company or other commercial or legal entity, nor merge with any other company or entity nor shall the controlling interest of the Grantee be transferred, whether in whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company or entity without the prior approval of the Congress of the Philippines: *Provided*, That the foregoing limitation shall not apply to any transfer or issuance of shares of stock in the implementation of the requirement for the Grantee's dispersal of ownership pursuant to Section 8 of this Act; or to any issuance of shares to any foreign or local investors pursuant to or in connection with any increase in the Grantee's authorized capital stock which results in the dilution of the stockholdings of the Grantee's then existing stockholders: *Provided, moreover*, That the foregoing limitations shall not apply to any transfer, sale or issuance of shares of stock at the level of corporate stockholders of the Grantee's: *Provided, furthermore*, That the foregoing limitations shall not apply in case of assignment or transfer of the operation of any of its related business such as, but not



limited to, telecommunications business to another entity: *Provided, however,* That any such transfer, sale or issuance at the level of the corporate stockholders of the Grantee is in accordance with applicable constitutional limitations: *Provided, finally,* That any person or entity to which such shares are sold, transferred or assigned under this Act shall be subject to the same conditions, terms, restrictions and limitations of this Act.

**SECTION 7. *Cross-Ownership; Market Power Abuse and Anti-Competitive Behavior.*** – The Grantee shall not engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

The Grantee or any of its stockholders, directors or officers thereof, or any of their relatives within the fourth civil degree of consanguinity and their respective spouses, shall not be allowed to hold any shares of stock in any Power Industry Player as defined in this Act. And a Power Industry Player or its stockholders, directors or officers thereof, or any of their relatives within the fourth civil degree of consanguinity and their respective spouses, shall not be allowed to hold any shares of stock in the Grantee: *Provided,* That the cross-ownership prohibition under this provision shall not apply to a relative by blood or marriage, if such relative of any stockholder, director or officer of the Grantee has no employment, consultancy, fiduciary, contractual, commercial or other economic relationship or interest in the Grantee, or conversely, if such relative of any stockholder, director or officer of a Power Industry Player has no employment, consultancy, fiduciary, contractual, commercial or other economic relationship or interest in the Power Industry Player: *Provided, further,* That this prohibition on cross-ownership shall not apply to: (a) ownership of shares of stock in a company listed in the Philippine Stock Exchange (PSE) even if such listed company

is a Power Industry Player, if such share ownership is not more than one *per centum* (1%) of the total outstanding shares of such listed Power Industry Player; or (b) ownership of shares of stock which is not more than one *per centum* (1%) in a company listed in the PSE which owns or controls shares of stock in the Grantee: *Provided, moreover,* That such owner of shares of stock in the listed corporate stockholder of the Grantee shall not own more than one per centum (1%) of the shares of stock or equity interest in any Power Industry Player.

No shares of stock issued or acquired in violation hereof shall be allowed to vote or be entitled to representation at any stockholders' meeting of the Grantee, nor shall the holder thereof be entitled to any of the rights of a stockholder of the Grantee, including the right to dividends, during the existence of such prohibited cross-ownership.

The losing bidders in the bid to operate the transmission and subtransmission facilities of TRANSCO, their principals, subsidiaries, affiliates, stockholders, directors and officers shall not be allowed to, directly or indirectly, be transferees or beneficial owners of the Grantee's shares of stock or any ownership rights pertaining thereto, for a period of ten (10) years from the effectivity of this Act.

The losing bidders, their principals, subsidiaries, affiliates, stockholders, directors and officers are likewise prohibited to, directly or indirectly, acquire or receive any pecuniary interest in the operations by the Grantee of this franchise for a period of ten (10) years from the effectivity of this Act.

An "affiliate" means any person which, alone or together with any other person, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control, with another person. As used herein, "control" shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

A “Power Industry Player” for purposes of this provision means a generation company, distribution utility, or its respective subsidiary or affiliate, or other entity engaged in generating and supplying electricity specified by the ERC.

The provisions on cross-ownership under Section 45 of Republic Act No. 9136 which are inconsistent with this provision shall be deemed modified accordingly insofar as the Grantee is concerned. The Grantee may provide ancillary services or engage in any related business which maximizes utilization of its assets.

**SECTION 8. *Dispersal of Ownership.*** – The Grantee shall list, subject to the requirements of the Securities and Exchange Commission (SEC) and the PSE, and make a public offering of the shares representing at least twenty *per centum* (20%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law within ten (10) years from the commencement of its operations: *Provided*, That the listing in the PSE of any company which directly or indirectly owns or controls at least thirty *per centum* (30%) of the outstanding shares of stock of the Grantee shall be considered full compliance of this listing requirement. In case compliance with this requirement is not reached, the ERC may, upon application of the Grantee, and after notice and hearing, allow such reasonable extension of the period within which the Grantee should list its shares of stock, if the market condition is not suitable for such listing.

**SECTION 9. *Tax Provisions.*** – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever,

local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

**SECTION 10. *Acceptance and Compliance.*** – Acceptance of this franchise shall be given in writing by the Grantee within sixty (60) days after the effectivity of this Act.

**SECTION 11. *Warranty in Favor of National and Local Government.*** – The Grantee shall hold the national, provincial and other local governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or persons, caused by the construction, installation, operation and maintenance of the transmission system and the grid.

**SECTION 12. *Ingress and Egress.*** – For the purpose of constructing and/or maintaining transmission and subtransmission assets and other related support facilities, it shall be lawful for the Grantee, its successors and assigns, with the approval of the relevant national and local government agencies concerned and the posting of bonds, as may be appropriate, to make excavations or lay conduits in any of the public places, highways, streets, lanes, alleys, avenues, sidewalks or bridges within the Philippines: *Provided, however*, That any public place, highways, street, lane, alley, avenue, sidewalk or bridge disturbed, altered or changed by reason of the construction and/or maintenance of transmission and subtransmission assets

and other related support facilities shall be immediately repaired and properly restored at the expense of the Grantee, its successors and assigns, in accordance with the standards set by the relevant national and local government agencies concerned.

SECTION 13. *Transfer of Personnel.* – Pursuant to Section 63 of Republic Act No. 9136 or the EPIRA Law, and subject to the qualification requirements as may be set by the Grantee, and subject further to the continued existence of their positions and functions in the Grantee’s work force, current employees of TRANSCO shall be given preference within the one hundred sixty-five (165) day period from commencement date over new job applicants in the hiring by the Grantee of its manpower requirements.

Notwithstanding the grant of this franchise, and subject to the conditions provided herein, employees of TRANSCO shall be entitled to receive from the government all benefits provided under Section 63 of Republic Act No. 9136 without prejudice to such other additional benefits as the Board of Directors of TRANSCO may determine.

SECTION 14. *Applicability Clause.* – The Grantee shall comply with and be subject to the provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Services Act”, which have not otherwise been modified or repealed by Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001*.

SECTION 15. *Reportorial Requirement.* – The Grantee shall submit an annual report of finances and operations to the Congress of the Philippines.

SECTION 16. *Separability Clause.* – If, for any reason, any of the sections or provisions of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 17. *Effectivity Clause.* – This Act shall take effect fifteen (15) days from the date of its publication, upon the initiative of the Grantee, in at least two (2) newspapers of general circulation in the Philippines.

Approved, December 1, 2008

## REPUBLIC ACT NO. 10150

AN ACT EXTENDING THE IMPLEMENTATION OF THE LIFELINE RATE, AMENDING FOR THE PURPOSE SECTION 73 OF REPUBLIC ACT NUMBERED NINETY-ONE THIRTY-SIX, OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

---

SECTION 1. Section 73 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001", is hereby amended to read as follows:

"SEC. 73. *Lifeline Rate.* – A socialized pricing mechanism called a lifeline rate for the marginalized end-users shall be set by the ERC, which shall be exempted from the cross subsidy phase-out under this Act for a period of twenty (20) years, unless otherwise extended by law. The level of consumption and the rate shall be determined by the ERC after due notice and hearing."

SEC. 2. *Separability Clause.* – If, for any reason, any provision of this Act or any part thereof shall be held unconstitutional and invalid, the other parts or provisions of this Act, which are not affected thereby, shall remain in full force and effect.

SEC. 3. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or parts thereof inconsistent with any of the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 4. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.

Approved, June 21, 2011



# Chapter VII

## Electric Power Industry Cases

Republic of the Philippines  
SUPREME COURT  
Manila

THIRD DIVISION

G.R. No. 127373

March 25, 1999

ENERGY REGULATORY BOARD and ILIGAN  
LIGHT & POWER, INC., Petitioners,

*versus*

COURT OF APPEALS and ASSOCIATION OF  
MINDANAO INDUSTRIES (AMI), representing  
among others the following member-  
companies: ALSON/ILIGAN CEMENT CORP.,  
MABUHAY VINYL CORP., MCCI CORP.,  
MINDANAO FERROALLOY CORP., and  
NATIONAL STEEL CORP., Respondents

x-----x

### DECISION

#### PANGANIBAN, J.:

Normally, electric power generated by the National Power Corporation (NPC) is sold through private utility firms authorized to operate within a franchise area. In the present case, the private respondents bypassed the franchise holder in their area and obtained power directly from the NPC. Petitioner, on the other hand, wants a disconnection of such direct supply. Which agency of the government has Jurisdiction to hear and

decide the dispute – the Energy Regulatory Board (ERB) or the Department of Energy (DOE)?

#### The Case

This is the main question posed in the Petition for Review before us, which seeks to set aside the September 27, 1994 Decision and November 19, 1996 Resolution of the Court of Appeals (CA) in CA-GR SP No. 33969. In its assailed Decision, the CA held that it was the DOE, no longer the ERB, which had Jurisdiction over direct connection and disconnection issues. The dispositive portion of its Decision reads:<sup>[iv][4]</sup>

“IN VIEW OF ALL THE FOREGOING, the instant petition for certiorari and prohibition is GRANTED. Accordingly, the order dated April 7, 1994 of respondent Energy Regulatory Board in ERB Case No. 93-97 entitled ‘In re: Petition for Implementation of Cabinet Policy Reforms in the Power Sector,’ is ANNULLED and SET ASIDE, and said respondent ERB is ‘directed to cease and desist from proceeding with the trial of and to dismiss said ERB Case No. 93-97 for lack of jurisdiction over the subject matter of the petition therein.”

The assailed Resolution denied the motions for reconsideration filed separately by the ERB and the Iligan Light and Power, Inc. (ILPI).

### The Facts

The factual antecedents of this case are not disputed. They are related by the CA as follows:

“xxx The members of the Association of Mindanao Industries are enterprises based in Mindanao and registered with the Board of Investments which were among those granted direct connection facility by the National Power Corporation although operating within the franchise area of private respondent Iligan Light and Power, Inc. (Iligan for short).

“On October 12, 1993, Iligan filed with the respondent Energy Regulatory Board (ERB for short) a petition for the implementation of the 1987 Cabinet Policy Reforms in the Power Sector, docketed as ERB-93-97, praying specifically that the direct supply of power to industries within its franchise area be discontinued by the National Power Corporation (NPC, for short).

“The Cabinet Policy Reforms referred to were among those approved by the President of the Philippines and her cabinet on January 21, 1987, the pertinent portion of which is quoted as follows:

‘2. Continue direct connections for industries authorized under the BOI-NPC Memorandum of Understanding of 12 January 1981, until such time as the appropriate regulatory board determines that direct connection of industry to NPC is no longer necessary in the franchise area of the specific utility or cooperative meeting standards of financial and technical capability, with satisfactory guarantees of non-prejudice to industry, to be set in consultation with NPC and relevant government agencies; and reviewed periodically by the regulatory board.’ xxx

“In its Petition, ILPI alleged, *inter alia*, that it can meet, even surpass, the set of financial standards adopted by the ERB pursuant to the policy guidelines set by the Cabinet xxx.

“AMI filed its ‘Answer with Affirmative Defenses and/or Motion to Dismiss,’ ‘without accepting jurisdiction of the Honorable Board over the subject matter of the petition,’ on the following grounds, to wit: (1) lack of jurisdiction to hear the petition for implementation of Cabinet Policy Reforms in the Power Sector following the transfer of its non-price regulatory jurisdiction and functions to the Department of Energy under Rep. Act No. 7638; (2) the petition failed to state a cause of action for non-avertment of petitioner’s ability and willingness to match the rates of NPC; and (3) non-joinder of indispensable parties xxx.

“On January 4, 1994, the ERB denied in open court AMI’s motion to dismiss the petition. Likewise, AMI’s motion for reconsideration was denied by the ERB in its order dated April 7, 1994 xxx. Hence, the instant petition for certiorari and prohibition to annul the aforesaid order dated April 7, 1994 and to prohibit respondent ERB from proceeding with the hearing of ILPI’s petition.”

### Ruling of the Court of Appeals

The appellate court Justified its ruling in favor of private respondents in this wise:

“To resolve the issues raised in the case at bar, it is necessary to first characterize the petition filed by ILPI with the respondent [herein petitioner] ERB. It seems quite clear that ILPI sought therein to discontinue the direct supply of power by the NPC to BOI-registered enterprises operating within its (ILPI’s) franchise area. Although the petition is styled as one seeking the implementation of the Cabinet Policy Reforms in the Power Sector, the core of the action, as well as the ultimate relief sought, is related to the distribution or marketing of energy resources.

The matter treated is thus not concerned with the fixing of power rates. Under the applicable provisions of law, the matter of direct supply of power, which is a matter of energy distribution and which is undoubtedly a non-price regulatory matter, is among those granted to the jurisdiction of the Department of Energy under Republic Act No. 7638.”

The ERB and the ILPI filed their separate motions for reconsideration, which were, however, denied in the assailed November 19, 1996 Resolution of respondent court.

Hence, this petition.

### Issues

Petitioner ILPI presents the following issues for resolution:

“I

“WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE ERB HAS NO JURISDICTION TO HEAR AND DECIDE CASES INVOLVING THE IMPLEMENTATION OF THE POLICY REFORMS.

“II

“WHETHER THE POLICY REFORMS COULD VALIDLY CONFER ON THE ERB THE AUTHORITY TO DETERMINE THAT NPC DIRECT CONNECTIONS ARE NO LONGER NECESSARY;

“III

“WHETHER THE DECISION IN THE NPC AND PHIVIDEC CASES IS APPLICABLE TO THIS CASE.”

In sum, the pivotal issue in this case, as stated by Petitioner ERB is “whether the ERB has Jurisdiction to hear and decide cases involving direct connection issues.”

### The Court’s Ruling

The petition has failed to show any reversible error on the part of the Court of Appeals.

### Main Issue: *Jurisdiction*

Petitioners submit that ERB’s Jurisdiction to hear and decide cases on direct connection of power supply with the NPC was conferred by the January 23, 1987 Cabinet Memorandum approving a set of Policy reforms in the power sector, specifically Item No. 2 thereof which provides:

“Continue direct connection for industries authorized under the BOI-NPC Memorandum of Understanding of 12 January 1981 until such time as the appropriate regulatory board determines that direct connection of industry to NPC is no longer necessary in the franchise area of the specific utility or cooperative. xxx”

Petitioners claim that RA 7638 transferred to the DOE the ERB’s non-price regulatory powers and functions *relative to the petroleum industry only*, as enumerated under Section 3 of Executive Order No. 172 (EO 172), which they quote as follows:

“SEC. 3. *Jurisdiction, Powers and Functions of the Board.* – When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates, or causes the emanation or generation of energy, such as but not limited to petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive materials, solar energy, tidal power, as well as non-conventional existing and potential sources.



“The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions-

“(a) Fix and regulate the prices of petroleum products;

“(b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

“(c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise known as the “Petroleum Act of 1949”, as amended by Presidential Decree No. 1700;

“(d) Regulate the capacities of new refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;

“(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.”

While conceding that the regulation of the marketing and the distribution of energy resources has been expressly transferred to the DOE, petitioners contend, however, that electric power is not an energy resource. They allege that since the authority to pass upon issues of direct electric power connection was not mentioned at all in the above-quoted

provision, it could not have been included among the functions given to the DOE.

Respondents, on the other hand, insist that Jurisdiction over the connection issue in the case at bar now belongs to the DOE. In support of their stand, they cite the consolidated cases (1) *National Power Corp. v. Court of Appeals and Cagayan Electric Power and Light Co.* and (2) *Phividec Industrial Authority v. Court of Appeals and Cagayan Electric Power and Light Co.*, in which this Court stated:

“The determination of which of the two public utilities has the right to supply electric power to an area which is within the coverage of both is certainly not a rate fixing function which should remain with ERB. It deals with the regulation of the distribution of energy resources which, under Executive Order No. 172, was expressly a function of ERB. However, with the enactment of Republic Act No. 7638, the Department of Energy took over such function. Hence, it is this Department which should then determine whether CEPALCO or PIA [Phividec Industrial Authority] should supply power to PIE-MO [Phividec Industrial Estate-Misamis Oriental].”

Consequently, the Court disposed of the consolidated cases as follows:

“WHEREFORE, both petitions in G.R. No[s]. 112702 and 113613 are hereby DENIED. The Department of Energy is directed to conduct a hearing with utmost dispatch to determine whether it is the Cagayan Electric Power and Light Co., Inc. or the National Power Corporation, through the PHIVIDEC Industrial Authority, which should supply electric power to the industries in the PHIVIDEC Industrial Estate-Misamis Oriental.”

While the core question raised in these consolidated cases was whether the NPC could supply power directly to the PIE-MO area, where CEPALCO had a franchise, we find the Court’s pronouncements on them relevant to the instant controversy. Corollary to the

main question was the issue of whether the NPC had the power to hear and decide cases involving direct power connection. This Court held that “the NPC is *not* the proper authority xxx, not only because the subject matter of the hearing is a matter involving the NPC itself, but also because the law has created the proper administrative body vested with authority to conduct a hearing. As to which was the “proper administrative body,” the Court made the following illuminating disquisition:

“The ERB, which used to be the Board of Energy, is tasked with the following powers and functions by Executive Order No. 172 which took effect immediately after its issuance on May 8, 1987:

‘SEC. 3. *Jurisdiction, Powers and Functions of the Board.* – When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and *distributing* energy resources. Xxx

‘The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions:

‘(a) Fix and regulate the prices of petroleum products;

‘(b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

‘(c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise known as the ‘Petroleum Act of 1949,’ as amended by Presidential Decree No. 1700;

‘(d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may

be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;

‘(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.’

“As may be gleaned from said provisions, the ERB is basically a price or rate-fixing agency. Apparently recognizing this basic function, Republic Act No. 7638 (An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes), which was approved on December 9, 1992 and which took effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation, specifically provides as follows:

‘SEC. 18. *Rationalization or Transfer of Functions of Attached or Related Agencies.* – The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.

‘The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property, and such personnel as may be necessary. *Provided*, That only such amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said Board of its non-price

regulatory powers and functions shall be affected by such transfer.

‘The power of the NPC to determine, fix, and prescribe the rates being charged to its customers under Section 4 of Republic Act No. 6395, as amended, as well as the power of electric cooperatives to fix rates under Section 16 (o), Chapter 11 of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided for in Executive Order No. 172.’

“Upon the effectivity of Republic Act No. 7638, then Acting Chairman of the Energy Coordinating Council Delfin Lazaro transmitted to the Department of Justice the query of whether or not the ‘non-power rate powers and functions’ of the ERB are included in the ‘jurisdiction, powers and functions transferred to the Department of Energy.’ Answering the query in the affirmative, the Department of Justice rendered Opinion No. 22 dated February 12, 1993 the pertinent portion of which states:

‘xxx we believe that since the provision of Section 18 on the transfer of certain powers and functions from ERB to DOE is clear and unequivocal, and devoid of any ambiguity, in the sense that it categorically refers to ‘non-price jurisdiction, powers and functions’ of ERB under Section 3 of E.O. No. 172, there is no room for interpretation, but only for application, of the law. This is a cardinal rule of statutory construction.

‘Clearly, the parameters of the transfer of functions for ERB to DOE pursuant to Section 18, are circumscribed by the provision of Section 3 of E.O. No. 172 alone, so that, If there are other ‘related’ functions of ERB under other provisions of E.O. No. 172 or other energy laws, these ‘related’ functions, which may conceivably refer to what you call ‘non-power rate powers and functions’ of ERB, are clearly not contemplated by Section

18 and are, therefore, not to be deemed included in the transfer of functions from ERB to DOE under the said provision.

‘It may be argued that Section 26 of R.A. No. 7638 contains a repealing clause which provides that:

‘All laws, presidential decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly. xxx.

‘and, therefore, all provisions of E.O. No. 172 and related laws which are inconsistent with the policy, purpose and intent of R.A. No. 7638 are deemed repealed. It has been said, however, that a general repealing clause of such nature does not operate as an express repeal because it fails to identify or designate the act or acts that are intended to be repealed. Rather, it is a clause which predicates the intended repeal upon the condition that a substantial conflict must be found[ed] on existing and prior acts of the same subject matter. Such being the case, the presumption against implied repeals and the rule on strict construction regarding implied repeals shall apply *ex proprio vigore*. For the legislature is presumed to know the existing laws so that, if repeal of particular or specific laws is intended, the proper step is to so express it. The failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws (*Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano*, 13 SCRA 377; *City of Naga vs. Agna*, 71 SCRA 176, cited in Agpalo, *Statutory Construction*, 1990 Edition, pp. 191-192).

‘In view of the foregoing, it is our opinion that only the non-price regulatory functions of ERB under Section 3 of E.O. 172 are transferred to the DOE.’ All the powers of ERB which are not within the purview of its ‘non-price regulatory jurisdiction, powers and functions’

as defined in Section 3 are not so transferred to DOE and accordingly remain vested in ERB.’

“The determination of which of two public utilities has the right to supply electric power to an area which is within the coverage of both is certainly not a rate-fixing function which should remain with the ERB. It deals with the regulation of the distribution of energy resources which, under Executive Order No. 172, was expressly a function of ERB. However, with the enactment of Republic Act No. 7638, the Department of Energy took over such function. Hence, it is this Department which shall then determine whether CEPALCO or PIA should supply power to PIE-MO.”

The foregoing sufficiently indicates that it is now the Department of Energy that has jurisdiction over the regulation of the marketing and the distribution of energy resources. It may be true that this function formerly belonged to the ERB, by virtue of the “Cabinet Policy Reforms in the Energy Sector” embodied in the Cabinet Memorandum of January 23, 1987, and EO 172 issued May 8, 1987. However, pursuant to Section 18 of RA 7638, which was subsequently enacted by Congress on December 9, 1992, the non-rate-fixing Jurisdiction powers and functions of the ERB have been transferred to the Department of Energy. The applications for the NPC’s direct supply or disconnection of power involve essentially the distribution of energy resources, not by any incident the determinations of power rates. Consequently, these applications be resolved by the DOE.

It is of no moment that the petition instituted by ILPI before the ERB was captioned “for the Implementation of the 1987 Cabinet Policy Reforms in the Power Sector.” The relief it specifically sought was the discontinuation of NPC’s direct supply of power to private respondent’s member-companies. Definitely then, the distribution of an energy resource was its main purpose.

Neither does the Court agree with the petitioners’ claim that the regulatory

functions of the ERB that were transferred to the DOE concerned those relating to the petroleum industry only and not to electric power. Section 3 of EO 172 broadly defines *energy resource* as “any substance or phenomenon which by itself or in combination with others xxx emanates, [or] generates xxx energy, xxx.” *Electric power* or *electricity* has been in turn defined as “an imponderable and invisible agent producing light, heat, chemical decomposition, and other physical phenomena.”

Undoubtedly electricity produces or generates energy. By simple logic, it is an energy resource. The regulation of its distribution is, therefore, among those functions formerly belonging to the ERB, which have been transferred to the DOE as expressly directed in Section 18 of RA 7638. Nowhere in this provision is there any restriction of its scope to petroleum and its products only. The reference to petroleum is merely by way of example of what an energy resource is. In fact, the set of examples of energy resources enumerated in the law is prefaced with “such as but not limited to.” This can only mean that the enumeration is nonrestrictive.

Moreover, Section 5 of RA 7638 defines the powers and functions of the DOE as follows:

“SEC. 5. *Powers and Functions.* – The Department shall have the following powers and functions:

xxx xxx xxx

“(d) Exercise supervision and control over all government activities relative to energy projects in order to attain the goods embodied in Section 2 of this Act.

“(e) Regulate private sector activities relative to energy projects as provided for under existing laws: *Provided,* That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and involvement

in all energy activities.”

As to what *energy projects* encompass, Section 3 of the same law gives this definition:

“SEC. 3. *Definition of Terms.* – (a) ‘Energy projects’ shall mean activities or projects relative to the exploration, extraction, production, importation-exportation, processing, transportation, marketing, distribution, utilization, conservation, stockpiling or storage of all forms of *energy products and resources.*” (Italics supplied.)

Definitely, the exploration, the production, *the marketing, the distribution,* the utilization or any other activity involving *any* energy resource or product falls within the supervision and control of the DOE.

**WHEREFORE** the petition is hereby *DENIED* and the assailed Decision is *AFFIRMED*.

**SO ORDERED.**

*Romero* (Chairman), *Vitug, Purisima,* and *Gonzaga-Reyes, Jr.,* concur

**Republic of the Philippines  
SUPREME COURT  
Manila**

**SECOND DIVISION**

**G.R. No. 135925**

**December 22, 2004**

BATELEC II ELECTRIC COOPERATIVE INC.,  
Petitioner,

*versus*

ENERGY INDUSTRY ADMINISTRATION BUREAU  
(EIAB), PUYAT STEEL CORP. AND NATIONAL  
POWER CORPORATION, Respondent.

x-----x

**DECISION**

**CHICO-NAZARIO, J.:**

*... Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which*

*cannot supply cheap electricity to power intensive industries. It is in the public interest when industries dependent on heavy use of electricity are given reliable and direct power at the lower costs thus enabling the sale of nationally marketed products at prices within the reach of the masses.*

Impugned, in this petition for review, is the decision dated 25 June 1998 of the Court of Appeals in CA-G.R. SP No. 47880 dismissing the special civil action for *certiorari* filed by petitioner Batangas II Electric Cooperative, Inc. (BATELEC II), questioning the resolution of the Energy Industry Administration Bureau (Bureau) of the Department of Energy which granted the application of private respondent Puyat Steel Corporation (PSC) for direct power connection with the National Power Corporation (NPC). Petitioner likewise assails the Court of Appeals resolution dated 13 October 1998 denying the motion for reconsideration filed by BATELEC II.

The particulars that ushered the filing of the petition, as culled from the resolution of the Bureau, which we find to be amply supported by the records, follow:

Petitioner BATELEC II is an electric cooperative authorized to distribute electric power in Rosario, Province of Batangas.

Private respondent PSC is a galvanizing steel sheet company in the Philippines having been established in 1956. Granted a pioneer status by the Board of Investments, it embarked to build in Rosario, Batangas Province, its new plant, envisioned as a modern galvanizing plant utilizing a state-of-the-art non-oxidizing furnace-type process, the first of its kind in the country.

As this new plant would entail a delivery voltage of 69 kilovolts (kv), PSC commenced on 14 November 1997 its negotiations for the supply of said energy requirement with BATELEC II, the electric franchise holder in the area. As the 69 kv transmission lines owned by the NPC are located about 1.4 kilometers away from the plant, PSC and BATELEC II entered into an agreement wherein the latter, not having any 69 kv transmission lines at present, shall handle the construction of the needed 69 kv transmission lines.

In a letter dated 02 December 1996, BATELEC II, through its manager Evangel A. Manundo, submitted to PSC a Bill of Materials for the proposed construction of the 69 kv transmission lines amounting to ₱2,956,838.56 with a *proviso* that additional costs shall later be incurred for other items. In said letter, BATELEC II requested that the amount be settled so that the procurement of the needed materials be facilitated.

In a letter dated 18 December 1996, PSC accepted BATELEC II's proposal. PSC further stated that said letter shall serve as a notice of award and to proceed with the construction of the needed 69 kv transmission lines.<sup>8</sup>

BATELEC II vouched to complete the installation of the needed facilities by April 1997. yet, BATELEC II botched in making good its part of the bargain. The scheduled completion was never fulfilled by BATELEC II even several months after the targeted date.

On 17 November 1997, PSC filed with the Bureau an application for direct connection with the NPC.<sup>1</sup> The Bureau, under the umbrella of the Department of Energy, derives its mandate from Section 12(c) of Republic Act No. 7638, known as *An Act Creating the Department of Energy, Rationalizing The Organization and Functions of Government Agencies Related To Energy, And for Other Purposes*, approved on 09 December 1992. Its functions embrace the following-

- (1) Assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, *electricity distribution*, as well as the importation, exportation, stockpiling, storage, shipping, transportation, refinement, processing, marketing, and *distribution of all forms of energy and energy products*, whether conventional or nonconventional;
- (2) Draw up plans to cope with contingencies of energy supply interruptions; and
- (3) Assist in the *formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources* such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distributing companies, independent power producers, and all other entities involved in conventional energy supply activities and implement and enforce said policies. (Emphases supplied)

As a standard operating procedure, the Bureau, in its evaluation of an application for direct power connection, whether new or for renewal, takes into account the technical or financial capability of the electric franchise holder in the applicant's site, in this case BATELEC II, to serve the energy needs of the applicant. Thus, on 04 December 1997, the Electricity Division of the Bureau endorsed to the Hearing Division its evaluation report on the technical and financial capability of BATELEC II.

For the purpose of looking for any possibility of settlement, the parties concerned were invited to a conference on 17 December 1997. In said meeting, representatives of BATELEC II explained their difficulties in acquiring the right of way for the 69 kv transmission lines. PSC, on the other hand, averred that it is precisely because of BATELEC II's failure to accomplish its undertaking that prompted it to file its application with the Bureau to source its direct power supply from NPC, inasmuch as it is a business enterprise with a crucial timetable.

The Bureau then directed BATELEC II and PSC to submit their respective position papers on the matter on or before 15 January 1998, after which the application was deemed submitted for resolution.

PSC reiterated in its position paper that it was BATELEC II's breach of their contract that impelled it to file an application for direct connection with the NPC. For its part, BATELEC II, in its Comment and Manifestation, claimed that it has finally solved the problem with the owner of the land where the 69 kv lines were to cross and that said 69 kv lines were finally constructed and ready for use by the PSC. However, the Bureau decreed that BATELEC II's claim that it had already constructed the needed 69 kv transmission lines has remained a bare claim, not supported by evidence on record as BATELEC II itself admitted in the meeting of 17 December 1997 that it has yet to construct said facility.

Further, the Bureau made the determination that BATELEC II was neither technically nor financially capable of supplying the 69 kv of power supply to PSC. The following were the specific findings of the Bureau concerning BATELEC II's technical and financial capability:

The technical capability evaluation covered the system loss, the power factor, and the average voltage variation.

On the system loss, records show that BATELEC II improved in 1996 having registered 24.70 percent against the cooperative's system loss for 1994 and 1995 of 27.98 percent and 28.57 percent, respectively. Notwithstanding, with the set standard at 22%, BATELEC II failed.

For its Power Factor, it is significant to note that BATELEC II's reactive metering was only installed in April, 1996. Thus, the cooperative's system power factor was only established in that same year. Nonetheless, having registered an 84.33 percent power factor, BATELEC II failed to meet the prescribed 90 percent power factor standard.

Regarding the system's average voltage variation ... BATELEC II passed.

For the Financial Capability, the following were discovered:

For its Outstanding Debt to NPC (ODNPC), BATELEC II incurred unpaid power bills in 1994 but was current for the years 1995 and 1996. The set standard is at no outstanding/overdue account with the National Power Corporation.

As to its Amortization Payments (AP) records show that in 1994, BATELEC II was three (3) quarters behind with its amortization payments while for 1995 and 1996 it was one (1) quarter behind its payment schedule with the National Electrification Administration (NEA). Under this parameter, the set standard is a maximum of one (1) month delayed payment.

As to its Average Collection Period (ACP), BATELEC II improved its collection efficiency having posed an average collection period from 1994 to 1996 of 60 days, 48 days, and 32 days, respectively. The set standard is 45 days.

For its Operating Expense Ratio (OER), BATELEC II posed 95.1 percent, 92.1 percent, and 91.62 percent, respectively, for the three years of 1994 to 1996. The set standard is 95%.

From all of the above, it is clear that BATELEC II failed to meet the performance standards set forth by ER 1-97. It is thus concluded that it is not capable of serving applicant's bulk energy needs.

Further, the Bureau took note that the National Electrification Administration (NEA), the overseer of electric cooperatives, rated BATELEC II's performance as under Category "E" "C" and "D" for the years 1994, 1995 and 1996. These are equivalent to "POOR" performance based on NEA's Annual Categorization Reports.

Accordingly, in a resolution dated 16 March 1998, the Bureau approved PSC's application for bulk power supply with the NPC after it made the determination that BATELEC II is not technically and financially capable of serving the bulk energy needs of psc. The Bureau concluded, with a *fallo* in this wise:

WHEREFORE, in view of all the foregoing, the Bureau is convinced that BATELEC II is not technically and financially capable of serving the energy requirements of applicant and hereby APPROVES the instant application for bulk power supply with the National Power Corporation by Puyat Steel Corporation.

It is to be noted however that the applicant will be provided bulk service at 69 kv due to technical limitations. Furthermore since under ER 1-97 the prescribed minimum transmission voltage level in the Luzon area is 230 kv, the rates to be applied in the instant

application shall permit the recovery by NPC of all costs associated with said 230 kv service. Finally, it is understood that applicant will comply with the rules and regulations that the DOE will issue governing bulk power supply.

Accordingly, applicant PUYAT STEEL CORPORATION is hereby directed to pay the amount of ONE THOUSAND PESOS (P1,000.00) to the Bureau pursuant to the DOF-DBM Circular No. 2-94 within thirty (30) days from receipt of this Resolution.

Consequently, private respondent PSC filed a complaint for Damages With Prayer for Preliminary Injunction and Temporary Restraining Order with the Regional Trial Court (RTC), Branch 87, Rosario, Batangas to enjoin petitioner BATELEC II from committing acts that would prevent direct power connection between respondents PSC and the NPC. In its complaint, PSC alleged that on 28 May 1998 BATELEC II maliciously switched off the air brake switch and removed cables and insulators from the transmission poles supplying electricity from the NPC to PSC resulting in complete electric power failure to the facilities of the latter in Rosario, Batangas.

On 08 June 1998, the trial court issued a temporary restraining order valid for twenty (20) days enjoining petitioner BATELEC II to desist from committing acts that would prevent the supply of electric power from NPC to PSC's plant in Rosario, Batangas, pursuant to respondent Bureau's Resolution of 16 March 1998.

Displeased, BATELEC II filed before the Court of Appeals a petition for *certiorari* with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order. BATELEC II ascribed grave abuse of discretion to the Bureau for issuing a resolution allegedly *sans* the benefit of a hearing and for its alleged failure to resolve *inter alia* the issue of NPC's disqualification from distributing electric power directly to consumers within the franchised area of BATELEC II. Later,



BATELEC II amended its petition to include the RTC, Branch 87, Rosario, Batangas which issued a temporary restraining order valid for twenty (20) days in favor of PSC.

The Court of Appeals denied the petition on the grounds of: (1) failure to exhaust administrative remedies as petitioner did not file a motion for reconsideration of the Bureau's resolution; and (2) failure to attach a certified true copy or duplicate original copy of the Bureau's resolution in defiance of Supreme Court Administrative Circular No. 3-96. The dispositive portion of the Court of Appeals decision provides:

**Accordingly**, the instant special civil action is hereby **DISMISSED**.

Petitioner was met with similar lack of success in its motion for reconsideration, denied by the Court of Appeals for lack of merit in a resolution dated 13 October 1998.

In this appeal, petitioner lays the following errors at the door of the Court of Appeals:

A. ... IN NOT DELVING INTO THE MERITS OF THE ABOVE PETITION, ABNEGATED ITS AUTHORITY TO DECIDE A QUESTION OF SUBSTANCE NOT THERETO FOR DETERMINED BY THE HONORABLE SUPREME COURT;

B. ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS OVERLOOKED THE FACT THAT THE PETITION FOR CERTIORARI FILED UNDER RULE 65 (RULES OF COURT) IS AN EXCEPTION TO THE RULE THAT A MOTION FOR RECONSIDERATION SHOULD FIRST BE FILED AND/OR THAT ADMINISTRATIVE REMEDIES SHOULD BE EXHAUSTED BEFORE RESORT TO COURT IS HAD;

C. ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER DID NOT COMPLY WITH SUPREME

COURT ADMINISTRATIVE CIRCULAR  
NO. 3-96 AND ITS REVISED ORDER  
NO. 1-88.

This petition brings to the following issues that call for resolution, namely:

- (1) Did the Court of Appeals commit a reversible error in dismissing CA-G.R. SP No. 47880 on purely technical grounds, *i.e.*, that the attached copy of the NLRC decision is a mere photocopy of the original decision?
- (2) Did the Court of Appeals commit a reversible error in dismissing CA-G.R. SP No. 47880 on the ground of non-exhaustion of administrative remedies before filing a special civil action for certiorari under Rule 65?
- (3) Did the Court of Appeals err in refusing to rule on the correctness of the ERB's findings?

On the first issue, petitioner asserts that it has substantially complied with the requirements of Section 1, Rule 65 of the Rules of Civil Procedure, hence, in the interests of justice and equity, the Court of Appeals should have given due course to its special civil action for *certiorari*.

Antithetically, private respondent counterblasts that the mandatory requirement in Section 1, Rule 65 of the 1997 Rules of Civil Procedure dictates that the petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto. Non-compliance thereto warrants outright dismissal of the petition, private respondent sharply retorts.

The precursor of the Revised Rules of Civil Procedure, Supreme Court Administrative Circular No. 3-96, which took effect on 01 June 1996, instructs us on what a "certified true copy" is:

1.... The “certified true copy” thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as hereinbefore specified....

3. The certified true copy must further comply with all the regulations therefor of the issuing entity and *it is the authenticated original of such certified true copy*, and not a mere xerox copy thereof, which shall be utilized as an annex to the petition or other initiatory pleading.... (Emphasis supplied.)

From this guidepost, the disputed document, although stamped as “Certified True Copy,” was neither a “duplicate original copy” nor an authenticated original of such “certified true copy” thereof, in contravention of paragraph 3 of the above-quoted guidelines. Neither was the authority of the person who signed the same indicated in the face of the document. Hence, no error may be ascribed to the Court of Appeals in dismissing the petition for *certiorari* outright pursuant to paragraph 5 of Supreme Court Administrative Circular No. 3-96, which provides:

5. It shall be the duty and responsibility of the party using the documents required by Paragraph (3) of Circular No. 1-88 to verify and ensure compliance with all the requirements therefor as detailed in the preceding paragraphs. *Failure to do so shall result in the rejection of such annexes and the dismissal of the case. Subsequent compliance shall not warrant any reconsideration unless the court is fully satisfied that the non-compliance was not in any way attributable to the party, despite due diligence on his part, and that there are highly justifiable and compelling reasons for the court to make such other disposition as it may deem just and equitable.*

The Court does not close its eyes to special cases when for compelling reasons, we have disregarded similar procedural defects in

order to correct a patent injustice made. However, petitioner failed to demonstrate any gripping reason for a liberal application of the rules. The right to file a special civil action of *certiorari* is neither a natural right nor a part of due process. We call to mind *NYK International Knitwear Corp. Phils. v. NLRC*, where this Court articulated that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.

No reversible error may, thus, be ascribed to the appellate court in CA-G.R. SP No. 47880 when it refused to give due course to the petition for failure to observe this technical requirement.

Anent the second issue, the drift of petitioner that the instant case falls under the recognized exceptions to the rule on exhaustion of administrative remedies cannot pass judicial muster.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities to accord them the prior opportunity to decide controversies within their competence before the same may be elevated to the courts of justice for review. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.

The doctrine of exhaustion of administrative remedies is not absolute, however, there being instances when it may be dispensed with and judicial action may be validly resorted to immediately, among which

are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; (6) when irreparable damage will be suffered; 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; and 9) in *quo warranto* proceedings.

In the present case, there is nothing in the records to show that petitioner availed of administrative relief before filing a petition for *certiorari* with the Court of Appeals. It did not appeal the Bureau's resolution dated 16 March 1998 to the Secretary of Energy, which under Section 8 in relation to Section 12 of Rep. Act No. 7638 has the power over the bureaus under the Department. It has not, as well, suggested any plausible reason for direct recourse to the Court of Appeals against the Resolution in question. Neither has petitioner shown that the instant case falls among the recognized exceptions to the rule on exhaustion of administrative remedies.

Moreover, in light of the doctrine of exhaustion of administrative remedies, a motion for reconsideration must first be filed before the special civil action for *certiorari* may be availed of. As found by the appellate court, petitioner has, likewise, failed to establish that it had filed a motion for reconsideration before its direct recourse to judicial review nor has it amply argued why it should be excused from the observance of such requirement.

Equally specious is petitioner's train of thought that the requisite of filing a motion for reconsideration of the challenged resolution of the Bureau prior to filing a petition for *certiorari* with the Court of Appeals is dispensable in this case inasmuch as such petition is anchored on a purely question of law. It is a settled rule, it is true, that on purely legal question the aggrieved party need not exhaust administrative remedies.

This is because nothing of an administrative nature is to be done or can be done in the administrative forum. But the pivotal issue in this case of whether petitioner, not the NPC, should supply the power needs of PSC requires a probe into the technical and financial capability of petitioner to meet the requirements of bulk power supply of PSC - a question of fact, the determination of which is within the expertise of the Bureau. The contention of petitioner that the issue is on pure question of law is, therefore, hollow. Petitioner cannot in the guise of raising pure question of law, seek judicial intervention without exhausting the available administrative remedies.

On the merits of the case, the apple of discord between the parties is the propriety of allowing respondent PSC to directly avail of a power connection with the NPC. Petitioner strongly asserts that the NPC is disqualified from distributing directly electric power to respondent PSC in Rosario, Batangas, because it is located within the franchised area of petitioner BATELEC II. Petitioner adds that respondent NPC is mandated by law to generate and transmit electric power but not distribute it directly to the consumers like respondent PSC. Petitioner banks on this Court's pronouncement in *National Power Corporation v. Cañares* where we stated that the national policy is that *if* the power franchise holder can adequately supply the power requirement of industries-consumers at rates that the latter can obtain from NPC, direct connection with NPC is not favored. Petitioner's interpretation of *Cañares* is skewed.

We note that respondent PSC is an enterprise registered with the Bureau of Investments (BOI), as found by the Bureau. In *Cañares*, we held that there is nothing in the provisions of Presidential Decree (P.D.) No. 395, amending P.D. No. 380 and further amending Rep. Act No. 6395, entitled "*An Act Revising the Charter of the National Power Corporation*," which expressly or impliedly allowed or

sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises, such as respondent PSC, even if it would be violative of the rights of existing franchise holders. We stressed:

Presidential Decree No. 380, as amended, PDC Resolution No. 77-01-02 and NPC's own operational guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection *establish the state policy* that NPC is statutorily empowered to directly service all the requirement of a BOI-registered enterprise provided that, *first, any affected private franchise holder is afforded an opportunity to be heard on the application therefore, and second, from such hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates NPC* for directly serving the latter... (Emphasis in the original).

In other words, the Court, in *Cañares*, disposed that the policy of preference to the franchise holder is premised on the condition that such franchise holder must in the first place be *capable* of supplying adequately the power requirements of the BOI-registered customer and that such capability must first be ascertained through a hearing in due course. In the same vein, this Court, in *National Power Corporation v. Hon. Court of Appeals and Cagayan Electric Power and Light Co., Inc.* resonated that if after a hearing (or an opportunity for such hearing) it is established that the affected franchise holder is *incapable* or unwilling to match the *reliability* and rates of NPC, then a direct connection with NPC may be granted. This is the prevailing situation in the case at bar.

Here, after due hearing and after careful consideration of the pleadings submitted by petitioner franchise holder and respondent PSC, the Bureau made the distinct finding that petitioner is *not* technically and financially

capable of satisfying the power requirements of PSC. This determination by the Bureau, an administrative government agency which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. In scores of cases, it is an elementary rule, sanctified by long and consistent usage, that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

Finally, we draw attention to the fact that petitioner had the first bite to service the power needs of respondent PSC, but BATELEC II blew its chance by renegeing on its commitment with PSC. PSC's multi-million investment was at a stand-still as a result of petitioner's failure to render its services in good time. With no time to spare, PSC naturally sought alternative sources of power by applying for direct power supply with the NPC. Threatened to lose a lucrative deal, only then did BATELEC II exert its last-ditch effort to lure PSC back by giving the false information that it is now geared up to supply the power requirement of PSC. With its efforts to make PSC change its mind in vain, petitioner now waxes lyrical on the national policy of giving priority to power franchise-holders. The Court will not countenance petitioner's pretenses nor shall we be a party to an erroneous construal of the law.

To hold, as petitioner would have us believe, that industries such as respondent PSC, are *absolute* captive markets of the area, power franchise-holders (regardless of their capability to meet the demands of the market) is to stifle mercantile endeavors in particular and the nation's economy in general, as industrial enterprises will be at the mercy of unscrupulous franchise-holders which can be lackadaisical in delivering the power requirements to its customers without fear of losing its contracts to the NPC. Not only is this proposition unsound as it would be a turn-off to investors, it is likewise contrary to

the spirit of the law aimed towards national electrification, most beneficial to the greater number of the populace.

Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee. Thus in *Napocor v. Court of Appeals and Cagayan Electric Power and Light Co., Inc.*, the Court was most emphatic:

... Exclusivity is given by law with the understanding that the company enjoying it is *self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices*. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries...

The delay caused by petitioner in delivering power supply to PSC translates to higher costs on its part., *i.e.*, cost of borrowing and lost sales, which ultimately leads to higher prices of its products to the purchasing public.

Mindful that it is in the public interest when industries dependent on heavy use of electricity are given *reliable and direct power at the lower costs*, thus, enabling the sale of nationally marketed products at prices within the reach of the masses, the Court in the case at bar, finds no compelling cause to pronounce any merit in this petition.

WHEREFORE, the instant petition is **DENIED**. The decision dated 25 June 1998 and resolution dated 13 October 1998 of the Court of Appeals in CA-G.R. SP No. 47880 dismissing the special civil action for *certiorari* filed by petitioner are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

*Puno, Chairman, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.*

**EN BANC**

**G.R. No. 159796**

**July 17, 2007**

ROMEO P. GERACHI,  
KATULONG NG BAYAN (KB) and  
ENVIRONMENTALIST CONSUMERS  
NETWORK, INC. (ECN), Petitioners,

*versus*

DEPARTMENT OF ENERGY (DOE),  
ENERGY REGULATORY COMMISSION (ERC),  
NATIONAL POWER CORPORATION (NPC),  
POWER SECTOR ASSETS AND LIABILITIES  
MANAGEMENT GROUP (PSALM Corp.),  
STRATEGIC POWER UTILITIES GROUP (SPUG),  
and PANAY ELECTRIC COMPANY INC. (PECO),  
Respondents.

x-----x

**DECISION**

**NACHURA, J p:**

Petitioners Romeo P. Gerochi, Katulong Ng Bayan (KB), and Environmentalist Consumers Network, Inc. (ECN) (petitioners), come before this Court in this original action praying that Section 34 of Republic Act (RA) 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), imposing the Universal Charge, and Rule 18 of the Rules and Regulations (IRR) which

seeks to implement the said imposition, be declared unconstitutional. Petitioners also pray that the Universal Charge imposed upon the consumers be refunded and that a preliminary injunction and/or temporary restraining order (TRO) be issued directing the respondents to refrain from implementing, charging, and collecting the said charge. The assailed provision of law reads:

SECTION 34. Universal Charge. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;

(b) Missionary electrification;

(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;

(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

(d) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be a non-bypassable charge which shall be

passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO. The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amount collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

### **The Facts**

Congress enacted the EPIRA on June 8, 2001; on June 26, 2001, it took effect.

On April 5, 2002, respondent National Power Corporation-Strategic Power Utilities Group (NPC-SPUG) filed with respondent Energy Regulatory Commission (ERC) a petition for the availment from the Universal Charge of its share for Missionary Electrification, docketed as ERC Case No. 2002-165.

On May 7, 2002, NPC filed another petition with ERC, docketed as ERC Case No. 2002-194, praying that the proposed share from the Universal Charge for the Environmental charge of P0.0025 per kilowatt-hour (/kWh), or a total of P119,488,847.59, be approved for withdrawal from the Special Trust Fund (STF) managed by respondent Power Sector Assets and Liabilities Management Group (PSALM) for the rehabilitation and management of watershed areas.

On December 20, 2002, the ERC issued an Order in ERC Case No. 2002-165 provisionally approving the computed amount of P0.0168/kWh as the share of the NPC-SPUG from the Universal Charge for Missionary Electrification and authorizing the National Transmission Corporation (TRANSCO) and Distribution Utilities to collect the same from its end-users on a monthly basis.

On June 26, 2003, the ERC rendered its Decision (for ERC Case No. 2002-165) modifying its Order of December 20, 2002, thus:

WHEREFORE, the foregoing premises considered, the provisional authority granted to petitioner National Power Corporation-Strategic Power Utilities Group (NPC-SPUG) in the Order dated December 20, 2002 is hereby modified to the effect that an additional amount of P0.0205 per kilowatt-hour should be added to the P0.0168 per kilowatt-hour provisionally authorized by the Commission in the said Order. Accordingly, a total amount of P0.0373 per kilowatt-hour is hereby APPROVED for withdrawal from the Special Trust Fund managed by PSALM as its share from the Universal Charge for Missionary Electrification (UC-ME) effective on the following billing cycles:

(a) June 26-July 25, 2003 for National Transmission Corporation (TRANSCO); and

(b) July 2003 for Distribution Utilities (Dus).

Relative thereto, TRANSCO and Dus are directed to collect the UC-ME in the amount of P0.0373 per kilowatt-hour and remit the same to PSALM on or before the 15th day of the succeeding month.

In the meantime, NPC-SPUG is directed to submit, not later than April 30, 2004, a detailed report to include Audited Financial Statements and physical status (percentage of completion) of the projects using the prescribed format.

Let copies of this Order be furnished petitioner NPC-SPUG and all distribution utilities (Dus).

SO ORDERED.

On August 13, 2003, NPC-SPUG filed a Motion for Reconsideration asking the ERC, among others, to set aside the above-mentioned Decision, which the ERC granted in its Order dated October 7, 2003, disposing:

WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration" filed by petitioner National Power Corporation-Small Power Utilities Group (NPC-SPUG) is hereby GRANTED. Accordingly, the Decision dated June 26, 2003 is hereby modified accordingly.

Relative thereto, NPC-SPUG is directed to submit a quarterly report on the following:

1. Projects for CY 2002 undertaken;
2. Location
3. Actual amount utilized to complete the project;
4. Period of completion;
5. Start of Operation; and
6. Explanation of the reallocation of UC-ME funds, if any.

SO ORDERED.

Meanwhile, on April 2, 2003, ERC decided ERC Case No. 2002-194, authorizing the NPC to draw up to P70,000,000.00 from PSALM for its 2003 Watershed Rehabilitation Budget subject to the availability of funds for the Environmental Fund component of the Universal Charge.

On the basis of the said ERC decisions, respondent Panay Electric Company, Inc. (PECO) charged petitioner Romeo P. Gerochi and all other end-users with the Universal Charge as reflected in their respective electric bills starting from the month of July 2003.

Hence, this original action.

Petitioners submit that the assailed provision of law and its IRR which sought to implement the same are unconstitutional on the following grounds:

(1) The universal charge provided for under Sec. 34 of the EPIRA and sought to be implemented under Sec. 2, Rule 18 of the IRR of the said law is a tax which is to be collected from all electric end-users and self-generating entities. The power to tax is strictly a legislative function and as such, the delegation of said power to any executive or administrative agency like the ERC is unconstitutional, giving the same unlimited authority. The assailed provision clearly provides that the Universal Charge is to be determined, fixed and approved by the ERC, hence leaving to the latter complete discretionary legislative authority.

(2) The ERC is also empowered to approve and determine where the funds collected should be used.

(3) The imposition of the Universal Charge on all end-users is oppressive and confiscatory and amounts to taxation without representation as the consumers were not given a chance to be heard and represented.

Petitioners contend that the Universal Charge has the characteristics of a tax and is collected to fund the operations of the NPC. They argue that the cases invoked by the respondents clearly show the regulatory purpose of the charges imposed therein, which is not so in the case at bench. In said cases, the respective funds were created in order to balance and stabilize the prices of oil and sugar, and to act as buffer to counteract the changes and adjustments in prices, peso devaluation, and other variables which cannot be adequately and timely monitored by the legislature. Thus, there was a need to delegate powers

to administrative bodies. Petitioners posit that the Universal Charge is imposed not for a similar purpose.

On the other hand, respondent PSALM through the Office of the Government Corporate Counsel (OGCC) contends that unlike a tax which is imposed to provide income for public purposes, such as support of the government, administration of the law, or payment of public expenses, the assailed Universal Charge is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry. Thus, it is exacted by the State in the exercise of its inherent police power. On this premise, PSALM submits that there is no undue delegation of legislative power to the ERC since the latter merely exercises a limited authority or discretion as to the execution and implementation of the provisions of the EPIRA.

Respondents Department of Energy (DOE), ERC, and NPC, through the Office of the Solicitor General (OSG), share the same view that the Universal Charge is not a tax because it is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry, and is, therefore, an exaction in the exercise of the State's police power. Respondents further contend that said Universal Charge does not possess the essential characteristics of a tax, that its imposition would redound to the benefit of the electric power industry and not to the public, and that its rate is uniformly levied on electricity end-users, unlike a tax which is imposed based on the individual taxpayer's ability to pay. Moreover, respondents deny that there is undue delegation of legislative power to the ERC since the EPIRA sets forth sufficient determinable standards which would guide the ERC in the exercise of the powers granted to it. Lastly, respondents argue that the imposition of the Universal Charge is not oppressive and confiscatory since it is an exercise of the police power of the State and it complies with the requirements of due process.



On its part, respondent PECO argues that it is duty-bound to collect and remit the amount pertaining to the Missionary Electrification and Environmental Fund components of the Universal Charge, pursuant to Sec. 34 of the EPIRA and the Decisions in ERC Case Nos. 2002-194 and 2002-165. Otherwise, PECO could be held liable under Sec. 46 of the EPIRA, which imposes fines and penalties for any violation of its provisions or its IRR.

### The Issues

The ultimate issues in the case at bar are:

1. Whether or not, the Universal Charge imposed under Sec. 34 of the EPIRA is a tax; and
2. Whether or not there is undue delegation of legislative power to tax on the part of the ERC.

Before we discuss the issues, the Court shall first deal with an obvious procedural lapse.

Petitioners filed before us an original action particularly denominated as a Complaint assailing the constitutionality of Sec. 34 of the EPIRA imposing the Universal Charge and Rule 18 of the EPIRA's IRR. No doubt, petitioners have locus standi. They impugn the constitutionality of Sec. 34 of the EPIRA because they sustained a direct injury as a result of the imposition of the Universal Charge as reflected in their electric bills.

However, petitioners violated the doctrine of hierarchy of courts when they filed this "Complaint" directly with us. Furthermore, the Complaint is bereft of any allegation of grave abuse of discretion on the part of the ERC or any of the public respondents, in order for the Court to consider it as a petition for certiorari or prohibition.

Article VIII, Section 5 (1) and (2) of the 1987 Constitution categorically provides that:

SECTION 5. The Supreme Court shall have the following powers:

1. Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the rules of court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

But this Court's jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus, while concurrent with that of the regional trial courts and the Court of Appeals, does not give litigants unrestrained freedom of choice of forum from which to seek such relief. It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction. This circumstance alone warrants the outright dismissal of the present action.

This procedural infirmity notwithstanding, we opt to resolve the constitutional issue raised herein. We are aware that if the constitutionality of Sec. 34 of the EPIRA is not resolved now, the issue will certainly resurface in the near future, resulting in a repeat of this litigation, and probably involving the same parties. In the public interest and to avoid unnecessary delay, this Court renders its ruling now.

The instant complaint is bereft of merit.

### The First Issue

To resolve the first issue, it is necessary to distinguish the State's power of taxation from the police power.

The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary

purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character. The EPIRA resonates such regulatory purposes, thus:

SECTION 2. Declaration of Policy. — It is hereby declared the policy of the State:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and

services of electric utilities and other providers of electric power;

(g) To assure socially and environmentally compatible energy sources and infrastructure;

(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) To encourage the efficient use of energy and other modalities of demand side management.

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted.

Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power. In *Valmonte v. Energy Regulatory Board, et al.* and in *Gaston v. Republic Planters Bank*, this Court held that the Oil Price Stabilization Fund (OPSF) and the Sugar Stabilization Fund (SSF) were exactions made in the exercise of the police power. The doctrine was reiterated in *Osmeña v. Orbos* with respect to the OPSF. Thus, we disagree with petitioners that the instant case is different from the aforementioned cases. With the Universal Charge, a Special Trust Fund (STF) is also created under the

administration of PSALM. The STF has some notable characteristics similar to the OPSF and the SSF, viz.:

1. In the implementation of stranded cost recovery, the ERC shall conduct a review to determine whether there is under-recovery or over recovery and adjust (true-up) the level of the stranded cost recovery charge. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the STF. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.
2. With respect to the assailed Universal Charge, if the total amount collected for the same is greater than the actual availments against it, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs.
3. Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.

The OSG is in point when it asseverates:

Evidently, the establishment and maintenance of the Special Trust Fund, under the last paragraph of Section 34, R.A. No. 9136, is well within the pervasive and non-waivable power and responsibility of the government to secure the physical and economic survival and well-being of the community, that comprehensive sovereign authority we designate as the police power of the State.

This feature of the Universal Charge further boosts the position that the same is an exaction imposed primarily in pursuit of the State's police objectives. The STF reasonably serves and assures the attainment and perpetuity of the purposes for which the Universal Charge is imposed, i.e., to ensure the viability of the country's electric power industry.

### The Second Issue

The principle of separation of powers ordains that each of the three branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegari potest* (what has been delegated cannot be delegated). This is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.

In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minute of everyday life. Hence, the need to delegate to administrative bodies — the principal agencies tasked to execute laws in their specialized fields — the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards

prescribed by the law. These requirements are denominated as the completeness test and the sufficient standard test.

Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test mandates adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.

The Court finds that the EPIRA, read and appreciated in its entirety, in relation to Sec. 34 thereof, is complete in all its essential terms and conditions, and that it contains sufficient standards.

Although Sec. 34 of the EPIRA merely provides that "within one (1) year from the effectivity thereof, a Universal Charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users," and therefore, does not state the specific amount to be paid as Universal Charge, the amount nevertheless is made certain by the legislative parameters provided in the law itself. For one, Sec. 43 (b) (ii) of the EPIRA provides:

SECTION 43. Functions of the ERC. — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

xxx                      xxx                      xxx

(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to the following:

xxx

xxx

xxx

(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: Provided, That in the formulation of the financial capability standards, the nature and function of the entity shall be considered: Provided, further, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

Moreover, contrary to the petitioners' contention, the ERC does not enjoy a wide latitude of discretion in the determination of the Universal Charge. Sec. 51 (d) and (e) of the EPIRA clearly provides:

SECTION 51. Powers. — The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

xxx

xxx

xxx

(d) To 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;

(a) To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge.

Thus, the law is complete and passes the first test for valid delegation of legislative power.

As to the second test, this Court had, in the past, accepted as sufficient standards the following: "interest of law and order;"

"adequate and efficient instruction;" "public interest;" "justice and equity;" "public convenience and welfare;" "simplicity, economy and efficiency;" "standardization and regulation of medical education;" and "fair and equitable employment practices." Provisions of the EPIRA such as, among others, "to ensure the total electrification of the country and the quality, reliability, security and affordability of the supply of electric power" and "watershed rehabilitation and management" meet the requirements for valid delegation, as they provide the limitations on the ERC's power to formulate the IRR. These are sufficient standards.

It may be noted that this is not the first time that the ERC's conferred powers were challenged. In *Freedom from Debt Coalition v. Energy Regulatory Commission*, the Court had occasion to say:

In determining the extent of powers possessed by the ERC, the provisions of the EPIRA must not be read in separate parts. Rather, the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot to be extracted from any single part thereof but from a general consideration of the statute as a whole. Considering the intent of Congress in enacting the EPIRA and reading the statute in its entirety, it is plain to see that the law has expanded the jurisdiction of the regulatory body, the ERC in this case, to enable the latter to implement the reforms sought to be accomplished by the EPIRA. When the legislators decided to broaden the jurisdiction of the ERC, they did not intend to abolish or reduce the powers already conferred upon ERC's predecessors. To sustain the view that the ERC possesses only the powers and functions listed under Section 43 of the EPIRA is to frustrate the objectives of the law.

In his Concurring and Dissenting Opinion in the same case, then Associate Justice, now Chief Justice, Reynato S. Puno described

the immensity of police power in relation to the delegation of powers to the ERC and its regulatory functions over electric power as a vital public utility, to wit:

Over the years, however, the range of police power was no longer limited to the preservation of public health, safety and morals, which used to be the primary social interests in earlier times. Police power now requires the State to “assume an affirmative duty to eliminate the excesses and injustices that are the concomitants of an unrestrained industrial economy.” Police power is now exerted “to further the public welfare — a concept as vast as the good of society itself.” Hence, “police power is but another name for the governmental authority to further the welfare of society that is the basic end of all government.” When police power is delegated to administrative bodies with regulatory functions, its exercise should be given a wide latitude. Police power takes on an even broader dimension in developing countries such as ours, where the State must take a more active role in balancing the many conflicting interests in society. The Questioned Order was issued by the ERC, acting as an agent of the State in the exercise of police power. We should have exceptionally good grounds to curtail its exercise. This approach is more compelling in the field of rate-regulation of electric power rates. Electric power generation and distribution is a traditional instrument of economic growth that affects not only a few but the entire nation. It is an important factor in encouraging investment and promoting business. The engines of progress may come to a screeching halt if the delivery of electric power is impaired. Billions of pesos would be lost as a result of power outages or unreliable electric power services. The State thru the ERC should be able to exercise its police power with great flexibility, when the need arises.

This was reiterated in *National Association of Electricity Consumers for Reforms v. Energy*

*Regulatory Commission* where the Court held that the ERC, as regulator, should have sufficient power to respond in real time to changes wrought by multifarious factors affecting public utilities.

From the foregoing disquisitions, we therefore hold that there is no undue delegation of legislative power to the ERC.

Petitioners failed to pursue in their Memorandum the contention in the Complaint that the imposition of the Universal Charge on all end-users is oppressive and confiscatory, and amounts to taxation without representation. Hence, such contention is deemed waived or abandoned per Resolution of August 3, 2004. Moreover, the determination of whether or not a tax is excessive, oppressive or confiscatory is an issue which essentially involves questions of fact, and thus, this Court is precluded from reviewing the same.

As a penultimate statement, it may be well to recall what this Court said of EPIRA:

One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry. The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power

sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be privatized and its transmission business spun off and privatized thereafter.

Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution

and not one that is doubtful, speculative, or argumentative. Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void.

**WHEREFORE**, the instant case is hereby **DISMISSED** for lack of merit.

**SO ORDERED.**

**ANTONIO EDUARDO B. NACHURA**  
Associate Justice

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia and Velasco, Jr., JJ., concur.

**Republic of the Philippines  
SUPREME COURT  
Manila**

**SECOND DIVISION**

**G.R. Nos. 176935-36**

**March 13, 2009**

---

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ AND HONORIO DILAG, JR. (MEMBERS), Petitioners,

*versus*

CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA

DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DELOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON AND MANUEL LEANDER, Respondents.

x-----x

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS,

JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ AND HONORIO DILAG, JR. (MEMBERS), Petitioners,

*versus*

NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA-OFFICE OF THE ADMINISTRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ AND CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), Respondents

x-----x

**DECISION**

**TINGA, J.:**

Petitioners Zambales II Electric Cooperative, Inc. (ZAMECO II) Directors, namely: Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr., assail the Decision dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845, and its Resolution dated March 13, 2007. The assailed Decision upheld the authority of public respondent National Electrification Administration (NEA) to supervise electric cooperatives such as ZAMECO II and the power of NEA to take preventive and/or disciplinary measures against an electric cooperative’s board of directors, officers or employees. The questioned Resolution asserted the continuing regulatory power of NEA over electric cooperatives under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

The following facts are quoted from the assailed Decision:

Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barretto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio

Dilag, Jr. (hereafter petitioners) are members of the Board of Directors of the Zambales II Electric Cooperative, Inc. (hereafter ZAMECO II). ZAMECO II is an electric cooperative organized and registered under Presidential Decree No. 269, as amended.

NEA is a government owned and controlled corporation organized under Presidential Decree (PD) No. 269, as amended by PD No. 1645.

Castillejos Consumers Associations, Inc. (hereafter CASCONA) is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA, through its Board of Trustees, filed a letter-complaint with NEA seeking the removal of the petitioners for the following alleged offenses:

- a. illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to petitioners;
- b. excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from aforesaid corporations;
- c. anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II’s Systems Loss Reduction Program; and
- d. overstaying as members of the Board of Directors of ZAMECO II.

The letter-complaint was essentially based on the “Management and Financial Audit Report of Zambales II Electric Cooperative, Inc. (ZAMECO II) for the period from 01 January 1989 to 30 September 1997” dated June



1998 submitted by the Manager of the Coop Systems Audit Division to the NEA.

After an exchange of pleadings between herein parties, on March 12, 2003, the NEA-Administrative Committee (NEA-ADCOM) issued an Order setting the case for a preliminary mandatory conference.

During the preliminary mandatory conference, the parties agreed that:

- a. ZAMECO II Board shall be given up to November 15, 2003 to deliberate complainant's proposed term of compromise; and
- b. If no compromise agreement is reached until November 15, 2003, the parties shall submit verified/sworn "Position Paper" in lieu of a formal type of hearing.

On November 19, 2003, CASCONA submitted its position paper. For failure of petitioner to file its position paper despite the extended period, the ADCOM considered the case submitted for resolution.

On November 24, 2004, the NEA issued the assailed Resolution. Petitioners filed a motion for reconsideration thereto.

Without acting on petitioner's motion for reconsideration, on December 21, 2004, the NEA issued the assailed Office Order dated December 21, 2004 prompting petitioners to file the present petition for certiorari with this Court docketed as CA-G.R. SP No. 88195.

In a Resolution dated February 7, 2005 in CA-G.R. SP No. 88195, then 7th Division of this Court, issued a Temporary Restraining Order (TRO) valid for sixty (60) days enjoining the NEA, NEA-ADCOM and CASCONA from enforcing or implementing the Resolution dated November 24, 2004, Office Order No. 2005-003, Series of 2004 dated December 21, 2004.

After the issuance of said resolution, the NEA-ADCOM resolved petitioners' motion for reconsideration in the assailed Decision<sup>5</sup> dated February 15, 2005.

In a Resolution dated April 5, 2005, then 7th Division of this Court granted the preliminary injunction in CA-G.R. SP No. 88195.

On March 29, 2005, petitioners filed the present petition for review docketed as CA-G.R. SP No. 88845.

In a Resolution, dated August 22, 2005 issued by then 17th Division of this Court, CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845 were ordered consolidated pursuant to section 3(a), Rule III of the 2002 Internal Rules of the Court of Appeals, as amended.

The appellate court denied the consolidated petitions on the ground that NEA properly exercised its supervisory power over ZAMECO II. Corollary to this ruling is the Court of Appeals' declaration that petitioners have not been deprived of due process in the administrative proceedings. The appellate court denied reconsideration.

In the instant Petition for Review on Certiorari dated March 22, 2007, petitioners argue that NEA's power to supervise and control electric cooperatives had been abrogated by the EPIRA which decreed that all outstanding financial obligations of electric cooperatives to NEA shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.). Petitioners theorize that the regulatory authority which NEA exercises over electric cooperatives exists only by virtue of the loans incurred by the latter from NEA. With the condonation of these loans ordained under the EPIRA, NEA's power to supervise and control electric cooperatives had allegedly become defunct.

Petitioners insist that they were denied due process as they were never notified of the charges against them based on the July

24, 2003 Audit Report (2003 Audit Report). Allegedly, petitioners had been asked to respond only to the charges under the June 25, 1998 Audit Report (1998 Audit Report).

Finally, petitioners argue that NEA's Office of the Administrative Committee (ADCOM) does not have the authority to hear election-related cases. The questions raised by respondent Castillejos Consumers Association, Inc. (CASCONA), such as whether a director of an electric cooperative is already overstaying in office or is qualified to run for re-election, are allegedly election-related cases properly addressed to the Screening Committee in accordance with the Guidelines on the Conduct of Electric Cooperative District Elections (NEA Election Code).

NEA asserts in its Comment dated June 20, 2007, that the EPIRA did not abrogate its regulatory power over electric cooperatives and that its authority to supervise and control the latter does not emanate solely from the cooperatives' loan agreements with NEA. The EPIRA itself allegedly enhances the powers of the NEA and, together with Executive Order No. 460, Series of 2005 (E.O. No. 460), does not expressly or even impliedly state that the assumption by PSALM Corp. of (electric cooperatives') debts to NEA carries with it the abrogation of the latter's power to impose disciplinary action.

Furthermore, NEA refutes petitioners' allegation that they were denied due process in the administrative proceedings, insisting that they were sent notices of the audit proceedings conducted by NEA.

In its Comment dated June 22, 2007, CASCONA avers that there is no connection between PSALM Corp.'s assumption of the loan obligations of electric cooperatives and NEA's power to impose disciplinary action against petitioners. It also points out that the Deputy Administrator of NEA furnished a copy of the highlights of the 2003 Audit Report to petitioners in a letter dated August 15, 2003,

and required petitioners to submit their explanation thereon on or before September 16, 2003. The audit exceptions in the 2003 Audit Report allegedly pertain to issues which were already raised in CASCONA's complaint filed with NEA and which persisted as found in the 2003 Audit Report. Thus, petitioners cannot claim that the 2003 Audit Report was not made known to them.

CASCONA also argues that the issue pertaining to petitioners' overstaying in office is an administrative and not an election-related matter. The fact that there was no election scheduled at all negates the assertion of petitioners that the issue is a pre-election protest.

Petitioners filed a Consolidated Reply dated November 15, 2007, tracing the provenance of NEA's supervisory power over electric cooperatives. According to petitioners, with the passing of the EPIRA and E.O. No. 460, the borrower-lender relationship between ZAMECO II and NEA, by virtue of which the latter exercises regulatory powers over ZAMECO II, had been severed as of June 26, 2006. Thus, the Energy Regulatory Commission (ERC) is now the only regulatory agency which has jurisdiction over players in the power industry.

Petitioners insist that they had been deprived of due process as they were never heard on the charges as stated in the 2003 Audit Report cited as the bases for three (3) of the five (5) offenses in the Resolution of the NEA dated November 24, 2004, which directed, among other things, their removal from office.

In a Supplemental Petition dated November 3, 2008, petitioners inform the Court that it had registered as a cooperative under the Cooperative Development Authority (CDA) and had been issued a Certificate of Registration dated December 4, 2007. They also inform the Court that CASCONA members had taken over the grounds of ZAMECO II and that NEA, in a letter dated October 30, 2008,

designated Engineer Alvin Farrales as Officer-in-Charge of ZAMECO II.

NEA filed a Comment dated November 18, 2008, asserting that ZAMECO II's registration with the CDA should be revoked since it failed to comply with the requirement under the EPIRA for it to be first convert into a stock cooperative prior to its registration as an electric cooperative with the CDA. With the ineffectivity of ZAMECO II's registration with the CDA, it follows that NEA retains its supervisory and regulatory powers over ZAMECO II.

CASCONA, for its part, also insists on the continuing supervisory power of the NEA over ZAMECO II as the latter did not comply with the pre-conditions for its registration as a cooperative under the CDA.

Fundamental to the resolution of this case is the determination of the power and authority which NEA can properly exercise in light of the recently passed EPIRA and executive orders bearing on the power industry, particularly E.O. No. 119 series of 2002 and E.O. No. 460 series of 2005.

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.

Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating

the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole vinculum which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which states that, "NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act."

Remarkably, even as they continually assert that NEA's regulatory authority over electric cooperatives had been abrogated by the EPIRA, petitioners fail to cite passages of the latter law which are supposedly inconsistent with the powers granted to NEA under P.D. Nos. 269 and 1645 and which should accordingly be deemed to have been withheld from it.

A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry." PSALM Corp., on the other hand,

was created in order 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 manner.” Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

Furthermore, Sec. 8 of E.O. No. 119 specifically provides that, “The assumption by PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order...” Sec. 5, in turn, provides that the assumption of Rural Electrification Loans shall be effective upon compliance with certain terms and conditions, among which, is the continued compliance by the electric cooperatives with all NEA policies governing their relationship with NEA pursuant to P.D. Nos. 269 and 1645. These provisions explicitly recognize the continued authority of the NEA over electric cooperatives and the requirement for the latter to remain compliant with NEA policies on pain of having the assumption of their loan obligations by PSALM Corp. revoked.

However, we agree with petitioners’ contention that they were deprived of due process in the administrative proceedings before the NEA insofar as they were not informed that the audit disallowances contained in the 2003 Audit Report would constitute additional charges in the administrative proceedings.

The records disclose that petitioners were furnished with a copy of the 2003 Audit Report by the Chief Operating Officer of NEA in a letter dated August 15, 2003, and were asked to submit their explanation and action plan on the audit findings and recommendations on or before September 16, 2003. Petitioners were warned that their failure to submit an explanation shall be deemed a waiver of their opportunity to be heard and that the Audit Report shall accordingly be considered final.

Petitioners were also given three (3) 30-day extensions within which to submit their explanation/justification. Thus, in the letter dated November 20, 2003, petitioners were given up to November 28, 2003 to explain the audit findings, failing which the 2003 Audit Report shall be considered final as of November 29, 2003.

In yet another letter dated July 21, 2004, petitioners were informed that the explanation given on some of the audit findings was not acceptable and that the refund of the disallowed expenses covered in the Audit Report should follow. However, note should be taken of the fact that the letters dated November 20, 2003 and July 21, 2004 were sent by the Cooperatives Audit Department and not by the ADCOM which was then conducting the administrative investigation of CASCONA’s letter-complaint.

The first time that the 2003 Audit Report was expressly mentioned in the ADCOM proceedings was when CASCONA submitted the report together with its Position Paper dated November 14, 2003. Yet, even when the ADCOM issued its Order dated April 13, 2004, giving petitioners an extension of ten (10) days within which to file their Position Paper, there was no indication at all that the contents of the 2003 Audit Report shall be considered by the ADCOM as additional charges in the administrative proceedings.

Parenthetically, both the audit investigation and the administrative investigation on account of CASCONA’s letter-complaint were administrative proceedings. The difference between the two is that in ruling that petitioners had violated various guidelines pertaining to electric cooperatives and imposing the penalty of removal from office, NEA exercised a function which was decidedly quasi-judicial in nature. As such, NEA’s compliance with due process requirements should be evaluated based on the standard set forth in *Ang Tibay v. CIR*, pertaining to the cardinal rights which must be observed in

proceedings before administrative tribunals, synthesized in a subsequent case as follows: There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

Moreover, P.D. No. 269, from which NEA derives its jurisdiction over the controversy, contains an express provision that a “hearing proceeding” be conducted wherein the party whose rights shall be substantially affected by the exercise of NEA’s jurisdiction shall be given the opportunity to be heard. Sec. 47 of the law states:

Sec. 47. Hearings and Investigations.—The NEA is empowered to conduct such hearings and investigations and to issue such orders as are necessary for it to implement the provisions of this Chapter, and in connection therewith, without necessity of previous hearing, to require any public service entity or the officials thereof to furnish to it such information and data, including statements of account, schedules of rates, fees and charges, contracts, service rules and regulations, articles of incorporation, by-laws, audit reports and other internal records, documents, policies and procedures, as will enable the NEA to be sufficiently informed in exercising its powers and authorities: Provided, That no order shall issue finally determining and

substantially affecting any right of any person subject to the NEA’s jurisdiction without first affording such person and any other interested person opportunity for hearing as a party in the hearing proceeding. [Emphasis supplied]

It may be pointed out that in the Order dated November 6, 2003, the ADCOM mentioned an agreement between the parties that the submission of their respective position papers shall be in lieu of formal trial-type proceedings. This agreement, however, preceded CASCONA’s mention of the 2003 Audit Report on November 13, 2003. Therefore, it binds petitioners only insofar as they have effectively waived a “hearing proceeding” on the 1998 Audit Report but not with respect to the 2003 Audit Report.

Incidentally, under the 2005 Administrative Rules of Procedure of the National Electrification Administration and its Administrative Committee, which governs the procedure in administrative cases of electric cooperatives’ Board of Directors, officers and employees, the ADCOM or Hearing Officer is mandated to determine whether there is a need for a formal trial or hearing after the submission of the parties’ respective position papers.

In *Globe Telecom, Inc. v. National Telecommunications Commission*, supra, the Court invalidated a fine imposed by the NTC on Globe (due to the latter’s alleged lack of authority to operate SMS services) on the ground that Globe was never notified that its authority to operate SMS was put in issue. The Court emphasized the need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions. The Court said:

Sec. 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative

due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.

Nonetheless, we hesitate to declare the entire proceedings undertaken by the ADCOM void if only because petitioners were given fair and ample opportunity to present their side with respect to CASCONA's charges covered by the 1998 Audit Report. Specifically, the charges of illegal payment of 13th month pay and excessive bonuses/allowances claimed by petitioners in violation of a NEA Memorandum and overstaying as members of the Board of Directors were duly established by the evidence on record. It should be mentioned, in this regard, that the issue that petitioners had overstayed in office is not so much election-related as it is connected to the allegation that they had committed serious misconduct and deliberate negligence in office.

In its Resolution dated November 24, 2004, the NEA quoted the following findings of its audit team and the CASCONA complaint and found sufficient evidence to justify the penalty of removal from office meted against petitioners:

The Audit Report dated 25 June 1998, showed that ZAMECO II Board of Directors claimed 13th month pay, Anniversary bonus, Mid-year/Year-end Bonuses, Medical/clothing allowances, Prompt Payment Discount Bonus, and Separation Pay from January 1989 to September 1997.

The Audit Team's findings that the grant of benefits/allowances/bonuses to the members of the Board were in violation of NEA guidelines and without legal basis and as such, the total amount of P3,680,425.00 were

disallowed in audit and charged back to each Director as receivable.

Under the 1998 Audit Report, the details of the findings regarding the illegal 13th month pay and excessive Mid-year and Christmas bonus are as follows:

5. Board of Directors and GM Excessive Bonuses/Allowances

During the period audited, January 1989 to September 1997, the Board of Directors received/claimed various benefits which were in violation of NEA guidelines:

a. 13th Month Pay

This benefit is only granted to regular employees of the coop. Amount received by the Board ranges from P5,000.00 to P15,000.00.

b. Anniversary Bonus

There was no specific NEA guideline allowing the granting of such benefit but the Board Directors and the GM claimed bonuses of P300.00 to P10,000.00 from 1990-1996.

c. Mid-Year/Year-end Bonuses

*Per NEA memo # 35, the EC may grant mid-year and year-end bonuses of P500.00 and equivalent to one month per diem/salary to its officers and employees respectively as long as all the four (4) criteria are met. lawphil.net During the period under audit, only one criteria current with NPC was met. However, the Board Directors claimed mid-year bonuses from P2,000.00 to P20,000.00 and Christmas bonus from P5,000.00 to P47,555.*

d. Medical/clothing Allowances

The allowed allowances for coop officers and employees per Memo #35 for medical and clothing allowance were ₱2,000.00 and ₱1,000.00 (increased to ₱1,500.00 in 1996) respectively but what was granted to the Board ranges from ₱2,500.00 to ₱10,000.00

e. Prompt Payment Discount Bonus

From 1989 to 1994, the Board Directors and the GM were receiving additional monthly Prompt Payment Discount (PPD) bonus of ₱1,500.00 each.

x x x

The Audit Report dated 25 June 1998 covering the period January 01, 1989 to September 30, 1997 showed that *“the district elections of ZAMECO II Board of Directors are long overdue which deprived the members of the right to choose or change their district representative. The holdover stay of the incumbent directors also affects the operations of the coop because no election of officers is being made.”*

Under Section 13, Article III of the 1993 Guidelines on the Conduct of District Elections for Electric Cooperatives, it expressly provides that ***“the term of office of a regularly elected member of the Board of Directors shall be three (3) years. Such member shall be entitled to only one consecutive re-election.”***

However, the above 1993 EC Election Code was amended, specifically the Term of Office of the EC Board of Directors by “adding another term of three years for a total of nine

years (three term) to the present two consecutive terms (or a total of six years)” pursuant to NEA Board of Administrator Resolution No. 38, Series of 1999.

It is an undisputed fact that the term of office of most of the members of the Board of Directors of ZAMECO II had already expired. They remain as members of the Board on a hold over capacity since the coop’s district elections are not being conducted regularly which is a clear violation of the 1993 Guidelines on the Conduct of District Election, as amended, and ZAMECO II Constitution and By-Laws.

Thus, even if the other charges based on the 2003 Audit Report, on which petitioners were not heard, were disregarded, there is indeed substantial evidence to justify the penalty of removal from office imposed by the NEA. *1avvphi1*

The foregoing, notwithstanding, the apparent registration of ZAMECO II with the CDA on December 4, 2007 would ultimately bear on the question of whether NEA can still enforce its Resolution dated November 24, 2004 and Decision dated February 15, 2005, as affirmed by the Court of Appeals and by the Court herein.

Respondents NEA and CASCONA uniformly assert the invalidity of ZAMECO II’s CDA Registration on the ground that ZAMECO II allegedly did not follow the procedure outlined in the EPIRA and the Rules and Regulations to Implement Republic Act No. 9136 (EPIRA Implementing Rules) for an electric cooperative to first convert into a stock cooperative as a precondition to its registration with the CDA.

Sec. 57, Chapter VII of the EPIRA provides that, “Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under

the Corporation Code x x x” Sec. 7, Rule VII of the EPIRA Implementing Rules, in turn, provides as follows:

Sec. 7. Structural and Operational Reforms Between and Among Distribution Utilities....

(c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or grant granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:

(i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645....

Whether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper.

**WHEREFORE**, the instant case is hereby **REMANDED** to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs. **SO ORDERED.**

**DANTE O. TINGA**  
Associate Justice

WE CONCUR:

**LEONARDO A. QUISUMBING**  
*Acting Chief Justice*  
Chairperson

**CONCHITA CARPIO MORALES**  
Associate Justice

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

**ARTURO D. BRION**  
Associate Justice

#### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.

**LEONARDO A. QUISUMBING**  
Acting Chief Justice



**Republic of the Philippines  
SUPREME COURT  
Manila  
THIRD DIVISION**

**G.R. No. 180345**

**November 25, 2009**

SAN ROQUE POWER CORPORATION,  
Petitioner,

*versus*

COMMISSIONER OF INTERNAL REVENUE,  
Respondent

x-----x

**DECISION**

**CHICO-NAZARIO, J.:**

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner San Roque Power Corporation assails the Decision<sup>1</sup> of the Court of Tax Appeals (CTA) En Banc dated 20 September 2007 in CTA EB No. 248, affirming the Decision<sup>2</sup> dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, which dismissed the claim of petitioner for the refund and/or issuance of a tax credit certificate in the amount of Two Hundred Forty-Nine Million Three Hundred Ninety-Seven Thousand Six Hundred Twenty Pesos and 18/100 (P249,397,620.18) allegedly representing unutilized input Value Added Tax (VAT) for the period covering January to December 2002.

Respondent, as the Commissioner of the Bureau of Internal Revenue (BIR), is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the Value Added Tax (VAT), imposed by Section 108<sup>3</sup> of the National Internal Revenue Code (NIRC) of 1997. Moreover, it is empowered to grant refunds or issue tax credit certificates in accordance

with Section 112 of the NIRC of 1997 for unutilized input VAT paid on zero-rated or effectively zero-rated sales and purchases of capital goods, to wit:

SEC. 112. Refunds or Tax Credits of Input Tax.  
—

(A) Zero-rated or Effectively Zero-rated Sales—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a) (1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) Capital Goods—A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent the such input taxes have not

been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

On the other hand, petitioner is a domestic corporation organized under the corporate laws of the Republic of the Philippines. On 14 October 1997, it was incorporated for the sole purpose of building and operating the San Roque Multipurpose Project in San Manuel, Pangasinan, which is an indivisible project consisting of the power station, the dam, spillway, and other related facilities.<sup>4</sup> It is registered with the Board of Investments (BOI) on a preferred pioneer status to engage in the design, construction, erection, assembly, as well as own, commission, and operate electric power-generating plants and related activities, for which it was issued the Certificate of Registration No. 97-356 dated 11 February 1998.<sup>5</sup> As a seller of services, petitioner is registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN-98-006-007394.<sup>6</sup>

On 11 October 1997, petitioner entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydro potential of the Lower Agno River, and to be able to generate additional power and energy for the Luzon Power Grid, by developing and operating the San Roque Multipurpose Project. The PPA provides that petitioner shall be responsible for the design, construction, installation, completion and testing and commissioning of the Power Station and it shall operate and maintain the same, subject to the instructions of the NPC. During the cooperation period of 25 years commencing from the completion date of the Power Station, the NPC shall purchase all the electricity generated by the Power Plant.<sup>7</sup>

Because of the exclusive nature of the PPA between petitioner and the NPC, petitioner applied for and was granted five Certificates of Zero Rate by the BIR, through the Chief Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division. Based on these certificates, the zero-rated status of petitioner commenced on 27 September 1998 and continued throughout the year 2002.<sup>8</sup>

For the period January to December 2002, petitioner filed with the respondent its Monthly VAT Declarations and Quarterly VAT Returns. Its Quarterly VAT Returns showed excess input VAT payments on account of its importation and domestic purchases of goods and services, as follows:

2nd Quarter (April 1, 2002 to June 30, 2002)	July 24, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	237,950,763.19
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	18,166,330.54
		Input VAT on Importation of Goods for the Qtr	
		(22F)	2,308,837.00
		Total Available Input tax (23)	134,557,321.16
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	50,865,063.33
		VAT payable (Excess Input Tax) (26)	(50,830,066.97)
Tax Payable (overpayment) (28)	(50,830,066.97)		

On 19 June 2002, 25 October 2002, 27 February 2003, and 29 May 2003, petitioner filed with the BIR four separate administrative claims for refund of Unutilized Input VAT paid for the period January to March 2002, April to June 2002, July to September 2002, and October to December 2002, respectively. In these letters addressed to the BIR, Carlos Echevarria (Echevarria), the Vice President and Director of Finance of petitioner, explained that petitioner's sale of power to NPC are subject to VAT at zero percent rate, in accordance with Section 108(B)(3) of the NIRC.<sup>10</sup> Petitioner sought to recover the total amount of P250,258,094.25, representing its unutilized excess VAT on its importation of capital and other taxable goods and services for the year 2002, broken down as follows:

Qtr Involved		Output Tax	Input Tax	
		Domestic Purchases	Importations	Excess Input Tax
	(A)	(B)	(C)	(D) = (B) + (C) - (A)
1st	P 26,247.27	P95,003,348.91	P20,758,668.00	P115,735,769.84
2nd	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	34,996.36	18,166,330.54	2,308,837.00	20,440,171.18
	P61,243.63	P207,300,200.07	P43,019,138.00	P250,258,094.44

Petitioner amended its Quarterly VAT Returns, particularly the items on (1) Input VAT on Domestic Purchases during the first quarter of 2002; (2) Input VAT on Domestic Purchases for the fourth quarter of 2002; and (3) Input VAT on Importation of Goods for the fourth quarter of 2002. The amendments read as follows:

Period covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	297,719,296.25
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	95,126,981.69
		(22F)	20,758,668.00
		Total Available Input tax (23)	413,604,945.94
		VAT Refund/TCC Claimed (24A)	175,544,002.27
		Net Creditable Input Tax (25)	175,544,002.27
		VAT payable (Excess Input Tax) (26)	(238,060,943.67)
		Tax Payable (overpayment) (28)	(238,034,696.40)

2nd Quarter (April 1, 2002 to June 30, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	238,034,696.40
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr	
		(22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	17,918,056.50
		Input VAT on Importation of Goods for the Qtr	
		(22F)	1,573,004.00
		Total Available Input tax (23)	133,573,214.12
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	49,880,956.29
		VAT payable (Excess Input Tax) (26)	(49,845,959.93)
		Tax Payable (overpayment) (28)	(49,845,959.93)

3rd Quarter (July 1, 2002 to Sept. 30, 2002)	Oct. 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	83,692,257.83
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr	
		(22F)	1,465,875.00
		Total Available Input tax (23)	114,082,153.62
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	114,082,153.62
		VAT payable (Excess Input Tax) (26)	(114,082,153.62)
Tax Payable (overpayment) (28)	(114,082,153.62)		

On 30 May 2003 and 31 July 2003, petitioner filed two letters with the BIR to amend its claims for tax refund or credit for the first and fourth quarter of 2002, respectively. Petitioner sought to recover a total amount of P249,397,620.18 representing its unutilized excess VAT on its importation and domestic purchases of goods and services for the year 2002, broken down as follows:

Qtr Involved	Date Filed		Output Tax	Input Tax	
				Domestic Purchases	Importations
		(A)	(B)	(C)	(D) = (B) + (C) -(A)
1st	30-May-03	P 26,247.27	P95,126,981.69	P20,758,668.00	P115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,185,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,920.79	1,465,875.00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		P61,243.63	P207,175,558.81	P42,283,305.00	P249,397,620.18

Respondent failed to act on the request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6916 before it could be barred by the two-year prescriptive period within which to file its claim. Petitioner sought the refund of the amount of P249,397,620.18 representing its unutilized excess VAT on its importation and local purchases of various goods and services for the year 2002.

During the proceedings before the CTA Second Division, petitioner presented the following documents, among other pieces of evidence: (1) Petitioner's Amended Quarterly VAT return for the 4th Quarter of 2002 marked as Exhibit "A," showing the amount of P42,500,000.00 paid by NTC to petitioner for all the electricity produced during test runs; (2) the special audit report, prepared by the CPA firm of Punongbayan and Araullo through a partner, Angel A. Aguilar (Aguilar), and the attached schedules, marked as Exhibits "J-2" to "J-21"; (3) Sales Invoices and Official Receipts and related documents issued to petitioner for the year 2002, marked as Exhibits "J-4-A1" to "J-4-L265"; (4) Audited Financial Statements of Petitioner for the

year 2002, with comparative figures for 2001, marked as Exhibit "K"; and (5) the Affidavit of Echevarria dated 9 February 2005, marked as Exhibit "L".<sup>15</sup>

During the hearings, the parties jointly stipulated on the issues involved:

1. Whether or not petitioner's sales are subject to value-added taxes at effectively zero percent (0%) rate;
2. Whether or not petitioner incurred input taxes which are attributable to its effectively zero-rated transactions;
3. Whether or not petitioner's importation and purchases of capital goods and related services are within the scope and meaning of "capital goods" under Revenue Regulations No. 7-95;
4. Whether or not petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;
5. Whether or not the VAT input taxes being claimed for refund/tax credit by petitioner (had) been credited or utilized

against any output taxes or (had) been carried forward to the succeeding quarter or quarters; and

6. Whether or not petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 in the total amount of Two Hundred Forty Nine Million Three Hundred Ninety Seven Thousand Six Hundred Twenty and 18/100 Pesos (P249,397,620.18).

Simply put, the issue is: whether or not petitioner is entitled to refund or tax credit in the amount of P249,397,620.18 representing its unutilized input VAT paid on importation and purchases of capital and other taxable goods and services from January 1 to December 31, 2002.

After a hearing on the merits, the CTA Second Division rendered a Decision<sup>16</sup> dated 23 March 2006 denying petitioner's claim for tax refund or credit. The CTA noted that petitioner based its claim on creditable input VAT paid, which is attributable to (1) zero-rated or effectively zero-rated sale, as provided under Section 112(A) of the NIRC, and (2) purchases of capital goods, in accordance with Section 112(B) of the NIRC. The court ruled that in order for petitioner to be entitled to the refund or issuance of a tax credit certificate on the basis of Section 112(A) of the NIRC, it must establish that it had incurred zero-rated sales or effectively zero-rated sales for the taxable year 2002. Since records show that petitioner did not make any zero-rated or effectively-zero rated sales for the taxable year 2002, the CTA reasoned that petitioner's claim must be denied. Parenthetically, the court declared that the claim for tax refund or credit based on Section 112(B) of the NIRC requires petitioner to prove that it paid input VAT on capital goods purchased, based on the definition of capital goods provided under Section 4.112-1(b) of Revenue Regulations No. 7-95—i.e., goods or properties which have an estimated useful life of greater than one year, are treated as depreciable assets under Section 34(F) of the NIRC, and are used

directly or indirectly in the production or sale of taxable goods and services. The CTA found that the evidence offered by petitioner—the suppliers' invoices and official receipts and Import Entries and Internal Revenue Declarations and the audit report of the Court-commissioned Independent Certified Public Accountant (CPA) are insufficient to prove that the importations and domestic purchases were classified as capital goods and properties entered as part of the "Property, Plant and Equipment" account of the petitioner. The dispositive part of the said Decision reads:

WHEREFORE, the instant Petition for Review is DENIED for lack of merit.<sup>17</sup>

Not satisfied with the foregoing Decision dated 23 March 2006, petitioner filed a Motion for Reconsideration which was denied by the CTA Second Division in a Resolution dated 4 January 2007.<sup>18</sup>

Petitioner filed an appeal with the CTA En Banc, docketed as CTA EB No. 248. The CTA En Banc promulgated its Decision<sup>19</sup> on 20 September 2007 denying petitioner's appeal. The CTA En Banc reiterated the ruling of the Division that petitioner's claim based on Section 112(A) of the NIRC should be denied since it did not present any records of any zero-rated or effectively zero-rated transactions. It clarified that since petitioner failed to prove that any sale of its electricity had transpired, petitioner may base its claim only on Section 112(B) of the NIRC, the provision governing the purchase of capital goods. The court noted that the report of the Court-commissioned auditing firm, Punongbayan & Araullo, dealt specifically with the unutilized input taxes paid or incurred by petitioner on its local and foreign purchases of goods and services attributable to its zero-rated sales, and not to purchases of capital goods. It decided that petitioner failed to prove that the purchases evidenced by the invoices and receipts, which petitioner presented, were classified as capital goods which formed part of its "Property, Plant and Equipment,"

especially since petitioner failed to present its books of account. The dispositive part of the said Decision reads:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED. Accordingly, the assailed Decision and Resolution are hereby AFFIRMED.<sup>20</sup>

The CTA En Banc denied petitioner's Motion for Reconsideration in a Resolution dated 22 October 2007.<sup>21</sup>

Hence, the present Petition for Review where the petitioner raises the following errors allegedly committed by the CTA En banc:

I

THE COURT OF TAX APPEALS EN BANC COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN FAILING OR REFUSING TO APPRECIATE THE OVERWHELMING AND UNCONTROVERTED EVIDENCE SUBMITTED BY THE PETITIONER, THUS DEPRIVING PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS; AND

II

THE COURT OF TAX APPEALS COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE ABSENCE OF ZERO-RATED SALES BY PETITIONER DURING THE YEAR COVERED BY THE CLAIM FOR REFUND DOES NOT ENTITLE PETITIONER TO A REFUND OF ITS EXCESS VAT INPUT TAXES ATTRIBUTABLE TO ZERO-RATED SALES, CONTRARY TO PROVISIONS OF LAW.<sup>22</sup>

The present Petition is meritorious.

The main issue in this case is whether or not petitioner may claim a tax refund or credit in the amount of ₱249,397,620.18 for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant

to Section 112(A) of the NIRC or for input taxes paid on capital goods as provided under Section 112(B) of the NIRC.

To resolve the issue, this Court must re-examine the facts and the evidence offered by the parties. It is an accepted doctrine that this Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented. However, this rule does not apply where the judgment is premised on a misapprehension of facts, or when the appellate court failed to notice certain relevant facts which if considered would justify a different conclusion.<sup>23</sup>

After reviewing the records, this Court finds that petitioner's claim for refund or credit is justified under Section 112(A) of the NIRC which states that:

SEC. 112. Refunds or Tax Credits of Input Tax.—

(A) Zero-rated or Effectively Zero-rated Sales—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A) (2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale

of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A) (2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.<sup>24</sup>

Based on the evidence presented, petitioner complied with the abovementioned requirements. Firstly, petitioner had adequately proved that it is a VAT registered taxpayer when it presented Certificate of Registration No. OCN-98-006-007394, which it attached to its Petition for Review dated 29 March 2004 filed before the CTA in Division. Secondly, it is unquestioned that petitioner is engaged in providing electricity for NPC, an activity which is subject to zero rate, under Section 108(B)(3) of the NIRC. Thirdly, petitioner offered as evidence suppliers' VAT invoices or official receipts, as well as Import Entries and Internal Revenue Declarations (Exhibits "J-4-A1" to "J-4-L265"), which were examined in the audit conducted by Aguilar,

the Court-commissioned Independent CPA. Significantly, Aguilar noted in his audit report (Exhibit "J-2") that of the P249,397,620.18 claimed by petitioner, he identified items with incomplete documentation and errors in computation with a total amount of P3,266,009.78. Based on these findings, the remaining input VAT of P246,131,610.40 was properly documented and recorded in the books. The said report reads:

In performing the procedures referred under the Procedures Performed section of this report, no matters came to our attention that cause us to believe that the amount of input VAT applied for as tax credit certificate/refund of P249,397,620.18 for the period January 1, 2002 to December 31, 2002 should be adjusted except for input VAT claimed with incomplete documentation, those with various and other exceptions on the supporting documents and those with errors in computation totaling P3,266,009.78, as discussed in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report. We have also ascertained that the input VAT claimed are properly recorded in the books and, except as specifically identified in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report, are properly supported by original and appropriate suppliers' VAT invoices and/or official receipts.<sup>25</sup>

Fourthly, the input taxes claimed, which consisted of local purchases and importations made in 2002, are not transitional input taxes, which Section 111 of the NIRC defines as input taxes allowed on the beginning inventory of goods, materials and supplies.<sup>26</sup> Fifthly, the audit report of Aguilar affirms that the input VAT being claimed for tax refund or credit is net of the input VAT that was already offset against output VAT amounting to P26,247.27 for the first quarter of 2002 and P34,996.36 for the fourth quarter of 2002,<sup>27</sup> as reflected in the Quarterly VAT Returns.<sup>28</sup>

The main dispute in this case is whether or not petitioner's claim complied with the



sixth requirement—the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed. The CTA in Division and en banc denied petitioner’s claim solely on this ground. The tax courts based this conclusion on the audited report, marked as Exhibit “J-2,” stating that petitioner made no sale of electricity to NPC in 2002.<sup>29</sup> Moreover, the affidavit of Echevarria (Exhibit “L”), petitioner’s Vice President and Director for Finance, contained an admission that no commercial sale of electricity had been made in favor of NPC in 2002 since the project was still under construction at that time.<sup>30</sup>

However, upon closer examination of the records, it appears that on 2002, petitioner carried out a “sale” of electricity to NPC. The fourth quarter return for the year 2002, which petitioner filed, reported a zero-rated sale in the amount of P42,500,000.00. In the Affidavit of Echevarria dated 9 February 2005 (Exhibit “L”), which was uncontroverted by respondent, the affiant stated that although no commercial sale was made in 2002, petitioner produced and transferred electricity to NPC during the testing period in exchange for the amount of P42,500,000.00, to wit:<sup>32</sup>

A: San Roque Power Corporation has had no sale yet during 2002. The P42,500,000.00 which was paid to us by Napocor was something similar to a more cost recovery scheme. The pre-agreed amount would be about equal to our costs for producing the electricity during the testing period and we just reflected this in our 4th quarter return as a zero-rated sale. x x x.

The Court is not unmindful of the fact that the transaction described hereinabove was not a commercial sale. In granting the tax benefit to VAT-registered zero-rated or effectively zero-rated taxpayers, Section 112(A) of the NIRC does not limit the definition of “sale” to commercial transactions in the normal course of business. Conspicuously, Section 106(B) of

the NIRC, which deals with the imposition of the VAT, does not limit the term “sale” to commercial sales, rather it extends the term to transactions that are “deemed” sale, which are thus enumerated:

SEC 106. Value-Added Tax on Sale of Goods or Properties.

x x x x

(B) Transactions Deemed Sale.—The following transactions shall be deemed sale:

- (1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;
- (2) Distribution or transfer to:
  - (a) Shareholders or investors as share in the profits of the VAT-registered persons; or
  - (b) Creditors in payment of debt;
- (3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and
- (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation. (Our emphasis.)

After carefully examining this provision, this Court finds it an equitable construction of the law that when the term “sale” is made to include certain transactions for the purpose of imposing a tax, these same transactions should be included in the term “sale” when considering the availability of an exemption or tax benefit from the same revenue measures. It is undisputed that during the fourth quarter of 2002, petitioner transferred to NPC all the electricity that was produced during the trial

period. The fact that it was not transferred through a commercial sale or in the normal course of business does not deflect from the fact that such transaction is deemed as a sale under the law.

The seventh requirement regarding foreign currency exchange proceeds is inapplicable where petitioner's zero-rated sale of electricity to NPC did not involve foreign exchange and consisted only of a single transaction wherein NPC paid petitioner ₱42,500,000.00 in exchange for the electricity transferred to it by petitioner. Similarly, the eighth requirement is inapplicable to this case, where the only sale transaction consisted of an effectively zero-rated sale and there are no exempt or taxable sales that transpired, which will require the proportionate allocation of the creditable input tax paid.

The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003.<sup>33</sup> In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002.

Despite this lapse in procedure, this Court notes that petitioner was able to positively show that it was able to accumulate excess input taxes on various importations and local purchases in the amount of ₱246,131,610.40, which were attributable to a transfer of electricity in favor of NPC. The fact that it had filed its claim for refund or credit during the quarter when the transfer of electricity had

taken place, instead of at the close of the said quarter does not make petitioner any less entitled to its claim. Given the special circumstances of this case, wherein petitioner was incorporated for the sole purpose of constructing or operating a power plant that will transfer all the electricity it generates to NPC, there is no danger that petitioner would try to fraudulently claim input tax paid on purchases that will be attributed to sale transactions that are not zero-rated. Substantial justice, equity and fair play are on the side of the petitioner. Technicalities and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law abiding citizens.

Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the State, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.

It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as petitioner, but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the

indirect tax which is or which will be shifted to it had there been no exemption. In this case, petitioner is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that petitioner may shift to NPC by adding to the cost of the electricity sold to the latter.

Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, further clarifies that it is the lawmakers' intention that NPC be made completely exempt from all taxes, both direct and indirect:

Sec. 13. Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imports and Other Charges by Government and Governmental Instrumentalities. - The corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the corporation is hereby declared exempt:

- (a) From the payment of all taxes, duties, fees, imports, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities;
- (b) From all income taxes, franchise taxes, and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
- (c) From all import duties, compensating taxes and advanced sales tax and wharfage fees on import of foreign goods, required for its operations and projects; and

- (d) From all taxes, duties, fees, imports, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the corporation in the generation, transmission, utilization, and sale of electric power.

To limit the exemption granted to the NPC to direct taxes, notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.<sup>37</sup>

Congress granted NPC a comprehensive tax exemption because of the significant public interest involved. This is enunciated in Section 1 of Republic Act No. 6395:

Section 1. Declaration of Policy. Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of government, including its financial institutions.

The ability of the NPC to provide sufficient and affordable electricity throughout the country greatly affects our industrial and rural development. Erroneously and unjustly depriving industries that generate electrical power of tax benefits that the law clearly grants will have an immediate effect on consumers of electricity and long term effects on our economy.

In the same breath, we cannot lose sight of the fact that it is the declared policy of the State, expressed in Section 2 of Republic Act No. 9136, otherwise known as the EPIRA Law, “to ensure and accelerate the total electrification of the country;” “to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;” and “to promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy.” Further, Section 6 provides that “pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated.

Section 75 of said law succinctly declares that “this Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and power empowerment so that the widest participation of the people, whether directly or indirectly is ensured.”

The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and others similarly situated to obtain the input tax credits available under the law. Denying petitioner such credits would go against the declared policies of the EPIRA Law.

The legislative grant of tax relief (whether in the EPIRA Law or the Tax Code) constitutes a sovereign commitment of Government to taxpayers that the latter can avail themselves of certain tax reliefs and incentives in the course of their business activities here. Such a commitment is particularly vital to foreign investors who have been enticed to invest heavily in our country’s infrastructure, and who have done so on the firm assurance that certain tax reliefs and incentives can be availed of in order to enable them to achieve their projected returns on these very long-term and heavily funded investments. While the government’s ability to keep its commitment is put in doubt, credit rating turns to worse;

the costs of borrowing becomes higher and the harder it will be to attract foreign investors. The country’s earnest efforts to move forward will all be put to naught.

Having decided that petitioner is entitled to claim refund or tax credit under Section 112(A) of the NIRC or on the basis of effectively zero-rated sales in the amount of P246,131,610.40, there is no more need to establish its right to make the same claim under Section 112(B) of the NIRC or on the basis of purchase of capital goods.

Finally, respondent contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed strictissimi juris against the taxpayer.<sup>38</sup> However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.

**WHEREFORE**, the instant Petition for Review is **GRANTED**. The Decision of the Court of Tax Appeals En Banc dated 20 September 2007 in CTA EB Case No. 248, affirming the Decision dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, is **REVERSED**. Respondent Commissioner of Internal Revenue is ordered to refund, or in the alternative, to issue a tax credit certificate to petitioner San Roque Power Corporation in the amount of Two Hundred Forty-Six Million One Hundred Thirty-One Thousand Six Hundred Ten Pesos and 40/100 (P246,131,610.40), representing unutilized input VAT for the period 1 January 2002 to 31 December 2002. No costs.

SO ORDERED.

**MINITA V. CHICO-NAZARIO**  
Associate Justice

WE CONCUR:

**RENATO C. CORONA**  
Associate Justice

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

**ANTONIO EDUARDO B. NACHURA**  
Associate Justice

**DIOSDADO M. PERALTA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**RENATO C. CORONA**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**REYNATO S. PUNO**  
Chief Justice

**Republic of the Philippines**  
**SUPREME COURT**  
**Manila**

**THIRD DIVISION**

**G.R. No. 172960**

**March 26, 2010**

MACTAN ELECTRIC COMPANY, INC.,  
Petitioner,

*versus*

NATIONAL POWER CORPORATION,  
MACTAN CEBU INTERNATIONAL AIRPORT  
AUTHORITY and NATIONAL TRANSMISSION  
CORPORATION,  
Respondents.

SEC. 43. *Functions of the ERC* – The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

xxx      xxx      xxx

x-----x

**DECISION**

**CORONA, J.:**

Mactan Electric Company, Inc. (MECO) posed the purely legal question of whether paragraph (v), Section 43 of RA 9136:

**(v) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. All**

notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation. (emphasis supplied) clothed the Energy Regulatory Commission (ERC) with jurisdiction to resolve disputes involving MECO as an energy distribution company with a public franchise, National Power Corporation (NPC) as an energy generation company, National Transmission Corporation (TRANSCO) as a transmission and sub-transmission company and Mactan Cebu International Airport Authority (MCIAA) as an energy end-user.

The facts are not disputed.

MECO holds a franchise to operate an electric light and power service in the areas comprising Lapu-Lapu City and the Municipality of Cordova. It has a contract with NPC for the supply of “contract energy from September 26, 2005 to September 25, 2015. It is charged a minimum rate based on the contract energy per billing period, regardless of whether it fails to consume the contract energy allocated to it. However, it may apply for reduction of its contract energy upon payment of a buy-out fee except under the following circumstances:

4.7.1 The reduction is caused by the transfer by a consumer of its power and energy source from [MECO] to [NPC] or, to another customer of [NPC] located within the same grid prompting the other customer to correspondingly increase its electric supply requirement with [NPC], notwithstanding that [MECO] may have itself imposed penalties or buy-out provisions to such transferring consumer. [MECO] shall have sixty (60) days from transfer within which to request the appropriate

reduction and the decrease shall be deemed effective from such date of transfer. Provided further that [MECO] and [NPC] shall ensure that the transfer shall not disadvantage any assignee(s) of [NPC].

4.7.2 Expected reduction in the Contracted Energy by the [MECO] with the [NPC] caused or initiated by the industrial customers of the [MECO] as listed in Annex 1a shall be excused by the SUPPLIER. To be able to avail of this exemption, [MECO] must inform [NPC] in writing sixty (60) days prior to the effectivity of the reduction in the Contracted Energy. It is understood that the expected reduction is neither due to self-generation nor transfer to another power SUPPLIER.

MCIAA was listed as an industrial customer of MECO in Annex 1a of the supply contract. MCIAA and MECO had a contract for electric power service connection for a period of one year, subject to automatic renewal, unless either party desired to terminate the contract, in which case said party must serve a 30-day written notice upon the other for the termination or amendment to take effect. Their contract began on September 19, 1995 and was renewed every year thereafter. On April 24, 2006, MECO received notice from MCIAA that it was terminating their contract effective May 24, 2006.

MECO filed with the Regional Trial Court (RTC), Branch 54, Lapu-Lapu City, a complaint for damages with prayer for temporary restraining order and/or writ of preliminary injunction against MCIAA, NPC and TRANSCO. The material allegations in the complaint are reproduced below, for they are determinative of the question of law raised herein:

2.19 Although the MCIAA letter of termination does not indicate from whom MCIAA will get its electric power supply after May 24, 2006, there are strong indications as

shown by the following circumstances recently validated, and thus reasonable grounds to believe that NPC will directly supply electric power to MCIAA and the latter will directly source and buy such electric power from the NPC without passing through the distribution system of MECO

xxx            xxx            xxx

All these were done notwithstanding the validity, enforceability and existence of the “MECO-MCIAA Connection Contract” on one hand, and the validity, enforceability and existence of the “NPC-MECO Supply Contract” on the one hand.

2.20 It must be stressed that with the advent of the *EPIRA of 2001*, NPC is now without authority to sell electric energy directly to end-users including MCIAA.

xxx            xxx            xxx

CAUSES OF ACTION FIRST CAUSE OF ACTION  
AGAINST DEFENDANT NPC

(For Injunctive Relief)

xxx            xxx            xxx

3.1 NPC is now without authority in law to directly sell electric energy to end users including MCIAA. Such being the case, MECO has a clear and unmistakable right to secure an injunctive relief against NPC to enjoin the latter from committing an illegal act.

FIRST ALTERNATIVE  
CAUSE OF ACTION TO THE FIRST CAUSE  
OF ACTION

3.2 Granting without conceding that NPC has authority to directly sell electric energy to end-users, NPC cannot lawfully do so to MCIAA without prior approval from the appropriate government regulatory agencies such as the ERC and DOE. The

intended sale of electric energy by NPC to MCIAA [not] having [the approval of] ERC and DOE, plaintiff has a clear and unmistakable right to an injunctive relief to enjoin NPC from committing such unauthorized act.

SECOND ALTERNATIVE CAUSE OF  
ACTION TO THE FIRST CAUSE OF ACTION

3.3 Granting without conceding that NPC has authority to directly sell electric energy to end-users MECO has a clear, positive and unmistakable property right as a franchise holder, guaranteed by the due process protection of the constitution, to be heard first before the NPC can directly supply electric energy to any end user within MECO’s franchise area.

3.4 MECO likewise enjoys the priority in right to distribute electricity to any existing or prospective enterprises within its franchise area to the exclusion of any person or entity including the NPC.

3.5 MECO furthermore enjoys the constitutional right to free enterprise as well as the protective mantle of P.D. 2029 from competition with government-owned or controlled corporation including the NPC in various economic activities like the distribution of services in which MECO is primarily engaged.

3.6 The acts of NPC in directly supplying electric energy to MCIAA grossly violate the foregoing constitutional rights of MECO and seriously impair the franchise of MECO to exclusively operate a distribution system in the whole Island of Mactan and to directly convey electric power to end-users in that area of coverage.

3.7 The acts complained of against NPC will result in MECO breaching the NPC-MECO Supply Contract and be penalized by NPC under the said contract MECO will not be able to fully consume or take out the

level of electrical energy contracted for a particular period.

3.8 The acts complained of against NPC also constitute an unlawful contractual interference by NPC with the contractual obligation of MCIAA to MECO as evidenced by the existing MECO-MCIAA Connection Contract which is valid until September 19, 2006.

xxx      xxx      xxx

3.11 As a matter of law, MECO is therefore entitled to a writ of prohibitory injunction against NPC, enjoining the latter from directly supplying electric energy to MCIAA.

In the event, however, that NPC is now directly supplying electric energy to MCIAA, MECO is as a matter of law entitled to a writ of mandatory injunction against NPC, directing the latter to discontinue directly supplying electric energy to MCIAA.

FIRST CAUSE OF ACTION AGAINST  
DEFENDANT MCIAA

(For Specific Performance & Injunctive Relief)

xxx      xxx      xxx

4.1 MECO has a clear and unmistakable right to demand from MCIAA to honor and faithfully comply with the terms and conditions of the MECO-MCIAA Connection Contract which is valid, enforceable and existing until September 19, 2006.

xxx      xxx      xxx

4.3 Even assuming without conceding that MCIAA is given the right to terminate the said contract, the circumstances would show that such exercise of right by MCIAA was arbitrary amounting to bad faith, and grossly abused by MCIAA

to the prejudice and damage of MECO, aware as it was that such termination would expose MECO to liability under the latter's "NPC-MECO Supply Contract" which is valid until September 25, 2015.

xxx      xxx      xxx

CAUSE OF ACTION AGAINST  
DEFENDANT TRANSCO  
(For Injunctive Relief)

xxx      xxx      xxx

5.1 In the commission or performance of the acts complained of by NPC and MCIAA, NPC and MCIAA will unavoidably and consequently use the electrical transmission and sub-transmission facilities of TRANSCO and all other assets related to transmission operations.

5.2 In order not to allow the commission by NPC and MCIAA of illegal acts, TRANSCO should be enjoined from allowing the use of its electrical transmission and sub-transmission facilities

COMMON CAUSES OF ACTION  
AGAINST DEFENDANTS NPC  
and MCIAA (For Damages)

xxx      xxx      xxx

6.2 These acts likewise constitute an abuse of right under Articles 19 and 20 of the *Civil Code* which requires every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his duties. Furthermore, the commission of the acts complained of will willfully cause loss or injury to MECO in a manner that is contrary to morals, good customs or public policy in violation of Article 21 of the *Civil Code*.

6.3 More importantly, the acts complained of against NPC constitute an inducement



by a third party to MCIAA to violate its existing contract with MECO which contract is valid until September 19, 2006 amounting to contract interference which is prohibited by Article 1311 of the *Civil Code*.

The RTC issued a 72-hour temporary restraining order and later, a status quo order effective until June 11, 2006.

MCIAA, NPC and TRANSCO each filed a motion to dismiss on the grounds of lack of jurisdiction and improper venue. They argued that, under Section 43 of RA 9136, ERC had the primary administrative jurisdiction over the dispute as it involved players in the energy sector. MCIAA further pointed out a stipulation in its contract with MECO that in case of suit, the same should be filed in Cebu City, not Lapu-Lapu City.

NPC and MCIAA filed oppositions to the application of MECO for preliminary injunction. They disclosed that, in compliance with the requirements set forth in *Cagayan Electric Power and Light Company vs. National Power Corporation* (i.e., that an electric franchisee must be given the opportunity to be heard before NPC may provide direct service to enterprises within the franchise area), NPC and MCIAA disclosed to MECO on February 3, 2001, August 20, 2001 and October 2, 2001 their planned direct sale of bulk power and invited it to make a better offer, but MECO did not heed the invitation.

The RTC dismissed the case on the following ground:

After a judicious review of the records and on the basis of the hearings conducted on June 05 and 08, 2006 the court is convinced and hereby concludes that the ERC, the government regulatory agency that has original and exclusive jurisdiction to try disputes between and among players in the energy sector. This is clear under Sec. 43 (u) of Republic Act No. 9136,

xxx      xxx      xxx

While it is true that the plaintiff and defendants MCIAA, NPC and NTC had forged contractual relations with each other involving or affecting electricity and that disputes arising therefrom may involve provisions in the *Civil Code of the Philippines* and may even involve contractual interference, yet the indubitable fact remains that the controversy in its entirety necessarily involves, affects and/or pertains to the generation, transmission, distribution, and consumption of electricity – matters that are within the jurisdiction and competence of the ERC to adjudicate as an independent, quasi-judicial regulatory body. Notably, as admitted by the plaintiff, technical words and phrases will be utilized in the course of the proceedings; this is precisely the reason why the ERC has been tasked to hear and adjudicate disputes involving participants in the energy sector, it has the technical expertise and experience to deal with technical matters.

The doctrine of primary jurisdiction also comes into play in that courts will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge and experience of the said tribunal in determining technical and intricate matters of fact.

x x x

MECO filed the instant petition for this Court to declare that the RTC and not ERC had jurisdiction over its dispute with NPC, MCIAA and TRANSCO because the dispute was purely civil in nature. It arose from a mere violation of its (MECO's) rights under the Constitution and the *Civil Code*, and required for the resolution thereof an interpretation and application of said laws. No technical matter was involved and no expertise of ERC was needed.

MECO further argued that not all the parties to the dispute were players in the energy sector. MCIAA was neither a generation company, nor a transmission utility, nor a supplier of energy, nor a distributor thereof, but a mere end-user. Thus, the dispute was not “between and among participants or players in the energy sector” which would have brought it within the ambit of Section 43 (v) of RA 9136.

In their respective memoranda, NPC, MCIAA and TRANSCO maintain that the case arose from a dispute among energy players over electric power connection and distribution; hence, it fell within the primary administrative jurisdiction of ERC under Section 43 (v) of RA 9136.

On July 11, 2007, MCIAA filed a manifestation with motion to dismiss, informing the Court that, pursuant to RA 6395, it filed with ERC an application for direct electric connection with NPC and TRANSCO under Section 3 (g) of said law. MCIAA urges the Court to dismiss the instant petition for having been rendered moot and academic by the filing of its application with ERC.

The question of law before the Court is: was it the RTC or the ERC which had jurisdiction over the dispute involving MECO, on one hand, and MCIAA, NPC and TRANSCO, on the other? The issue is not hypothetical even as MCIAA has filed a petition with ERC for direct electrical connection with NPC and TRANSCO. Jurisdiction is not conferred on ERC by the mere filing of a petition with it. Its jurisdiction is bestowed by law, specifically RA 9136.

There is, however, nothing in either RA 9136 or its implementing rules which grants ERC jurisdiction over the dispute.

Section 43 (v) confers on ERC original and exclusive jurisdiction over two kinds of cases:

(1) all cases contesting rates, fees, fines and penalties imposed by ERC in the

exercise of its powers, functions and responsibilities under Section 43 (a) through (u); and

(2) all cases involving disputes between and among participants or players in the energy sector.

Section 4(n), Rule 3 of the *Rules and Regulations to Implement RA 9136* (implementing rules) provides an administrative interpretation of the scope of Section 43 (v) of RA 9136, to wit:

SEC. 4. *Responsibilities of the ERC.* –

xx xx xx

(n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector *relating to the foregoing powers, functions and responsibilities.* (emphasis supplied)

Disputes between and among participants or players in the energy sector which may possibly be related to the powers, functions and responsibilities of ERC are those arising from cross-ownership, abuse of market power, cartelization and anti-competitive or discriminatory behavior by any electric power industry participant as defined and penalized under Section 45 of RA 9136 and Sections 3, 4, 5 and 8, Rule 11 of the implementing rules. It is ERC which is authorized to monitor and penalize these prohibited acts and to stop and redress the same through such remedial measures as the issuance of injunction.

The subject matter of the dispute between the parties is neither cross-ownership, nor abuse of market power, nor cartelization, nor anti-competitive or discriminatory behavior. Based on the allegations of MECO in its complaint and the essence of the relief it sought, the subject matter of its dispute

with MCIAA, NPC and TRANSCO involved the distribution of energy resource, specifically the direct supply of electricity by NPC through TRANSCO to MCIAA, without passing through the distribution system of MECO as the franchise holder in the area. Therefore, their dispute was not within the authority of ERC to resolve.

But neither did the RTC have jurisdiction over the dispute. That power belonged to the Department of Energy (DOE).

In *Energy Regulatory Board and Iligan Light & Power, Inc. v. Court of Appeals, et al.*, we declared that jurisdiction over the regulation of the marketing and distribution of energy resources is vested in the DOE. In the consolidated cases *National Power Corp. v. Court of Appeals and Cagayan Electric Power and Light Co.* and *Phividec Industrial Authority v. Court of Appeals and Cagayan Electric Power and Light Co.*, the Court traced the history of this regulatory function of DOE:

The ERB, which used to be the Board of Energy, is tasked with the following powers and functions by Executive Order No. 172 which took effect immediately after its issuance on May 8, 1987:

**“SEC. 3. Jurisdiction, Powers and Functions of the Board** – When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and **distributing** energy resources.

x x x

As may be gleaned from said provisions, the ERB is basically a price or rate-fixing agency. Apparently recognizing this basic function, Republic Act No. 7638 (*An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes*), which was approved on December

9, 1992 and which took effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation, specifically provides as follows:

**“SEC. 18. Rationalization or Transfer of Functions of Attached or Related Agencies.** – *The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.*

In *Batelec II Electric Cooperative Inc. v. Energy Industry Administration Bureau (EIAB), et al.*, the Court further reiterated that the DOE had regulatory authority over matters involving the marketing and distribution of energy resources.

DOE has retained such regulatory authority even with the enactment of RA 9136. Section 80 thereof provides that “[t]he applicable provisions of x x x Republic Act 7638, otherwise known as the ‘Department of Energy Act of 1992’ x x x shall continue to have full force and effect except in so far as inconsistent” with RA 9136. Corollary to Section 80, Section 37 assigned to DOE certain powers and functions in the supervision of the restructuring of the electricity industry, but these are “[i]n addition to its existing powers and functions.” Among the existing powers and functions of DOE is the regulation of the marketing and distribution of energy resource as provided in Section 18 of RA 7638, amending Section 3 of EO 172.

In fine, the RTC was correct when it dismissed the complaint of MECO for lack of jurisdiction. However, it erred in referring the parties to ERC because the agency with authority to resolve the dispute was the Department of Energy.

**WHEREFORE**, the petition is hereby **DENIED**.

Costs against petitioner.

**SO ORDERED.**

**RENATO C. CORONA**

Associate Justice  
Chairperson

WE CONCUR:

**PRESBITERO J. VELASCO, JR.**

Associate Justice

**DIOSDADO M. PERALTA**

Associate Justice

**MARIANO C. DEL CASTILLO**

Associate Justice

**JOSE CATRAL MENDOZA**

Associate Justice

***ATTESTATION***

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**RENATO C. CORONA**

Associate Justice  
Chairperson

***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Acting Chief Justice



# Appendices

## APPENDIX A

Benefits to Host Communities Pursuant to ER 1-94, As amended

- Section 5 (l) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992”

Legal Basis

- Section 66 of Republic Act No. 9136, otherwise known as “Electric Power Industry Reform (EPIRA) of 2001,” as detailed in rule 29, Part A of the Implementing Rules and Regulations of EPIRA.
- To recognize and provide recompense for the contribution made by the host local government units or region.

### POLICY

Objectives

- To lessen conflict of rights among host local government units, community and people affected, the energy resource developers or power producers and the appropriate agencies of the national government.
- To promote harmony and cooperation among host local government units, the energy-resource developer or power producers and the appropriate agencies of the national government.

Nature of Benefits/ Scope of Application	<b>One centavo per kilowatt hour (P0.01/kWh) of the Electricity Sales which shall apply to Generation Facilities and/or energy resource development projects located in all barangays, municipalities, cities, provinces and regions.</b>
Generation facility and/or Energy resource located in Non-highly urbanized city	Generation facility and/or energy resource located in highly urbanized city
* Electrification Fund (EF) at 50% of one centavo per kWh (P0.005/kWh)	* Electrification Fund (EF) at 75% of one centavo per kWh (P0.0075/kWh)
* Development and Livelihood Fund (DLF) at 25% of one centavo per kWh (P0.00125/kWh)	* Development and Livelihood Fund (DLF) at 12.5% of one centavo per kWh (P0.0025/kWh)
* Reforestation, Watershed Management, Health and/or Environment (RWMHEEF) At 25% of one centavo per kWh (P0.0025/kWh)	* Reforestation, Watershed Management, Health and/or Environment Enhancement Fund Enhancement Fund (RWMHEEF) at 12.5% of one centavo per kWh (P0.00125/kWh)

## Application of Electrification Fund

NON-HIGHLY URBANIZED CITY	HIGHLY URBANIZED CITY
<p>For generation facility and/or energy resource located in a Non-HUC, the P0.01/kWh financial benefits shall be allocated as follows:</p> <p>Fifty percent of one centavo per kilowatt hour (P0.005/kWh) of the total electricity sales shall be set aside as an electrification fund (EF) to be applied in the following radiating order:</p> <ol style="list-style-type: none"> <li>a. Designated resettlement area/s</li> <li>b. Host barangay/s</li> <li>c. Host municipality/ies</li> <li>d. Host province/s</li> <li>e. Host region/s</li> <li>f. Other areas as may be prioritized/determined by the DOE</li> </ol>	<p>For generation facility and/or energy resource located in a HUC, the P0.01/kWh financial benefit shall be allocated as follows:</p> <p>Seventy-five percent of one centavo per kilowatt hour (P0.0075/kWh) of the total electricity sales of all Generation Facilities located in HUC shall be set aside into one account as an electrification fund (EF) to be applied in the following radiating order:</p> <ol style="list-style-type: none"> <li>a. Designated resettlement area/s</li> <li>b. Host barangay/s</li> <li>c. Host city/ies</li> <li>d. Province/s nearest to the host city/ies</li> <li>e. Region/s of the host cities</li> <li>f. Other areas as may be priotized/determined by the DOE</li> </ol>

### Allocation of DLF and RWMHEEF

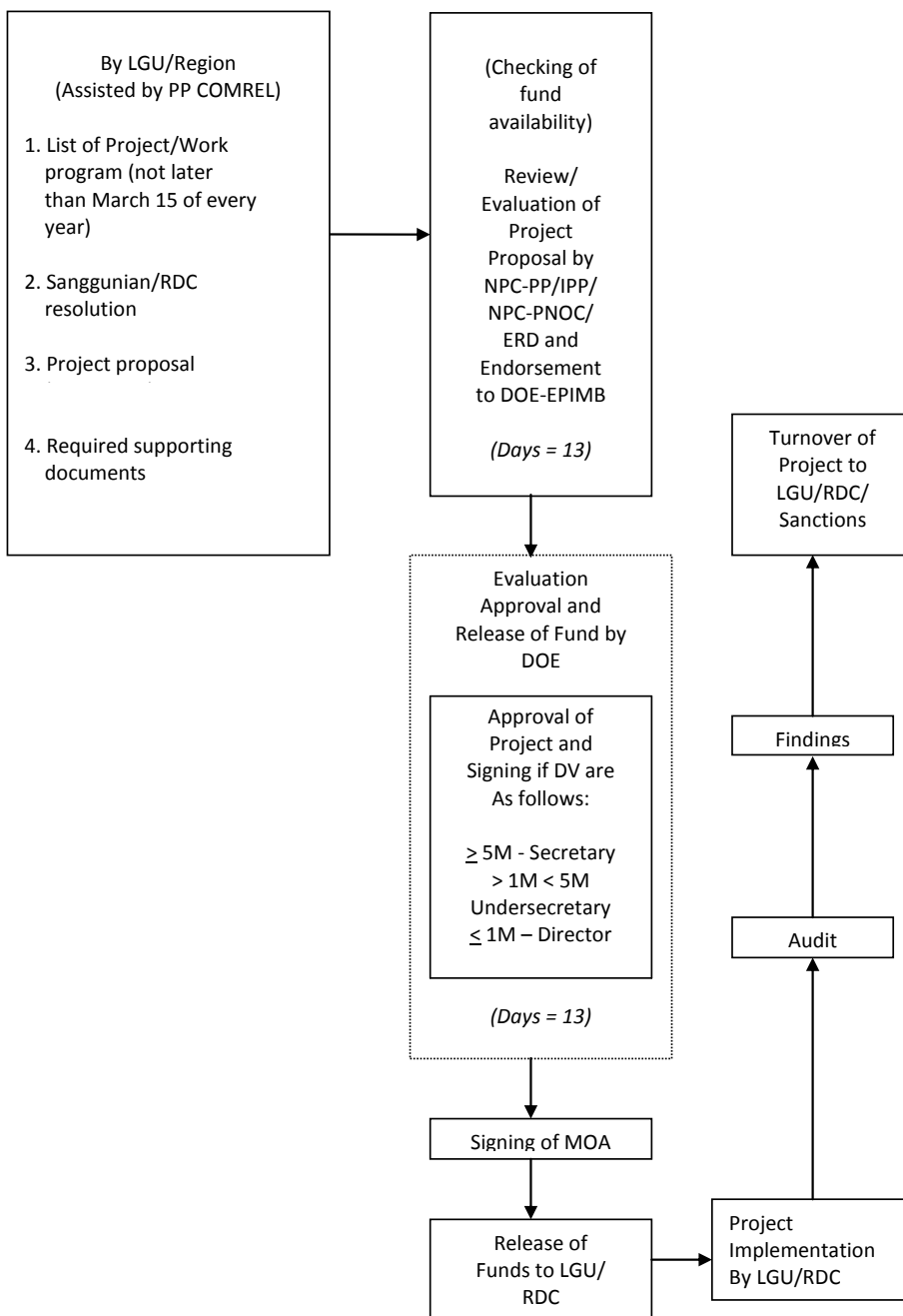
For non-highly urbanized city	For highly urbanized city
* Resettlement Area - 5%	* Designated resettlement areas - 10%
* Host Barangay - 20%	* Host Barangays - 30%
* Host Municipality/City - 35%	* Host City/ies - 60%
* Host Province - 30%	
* Host Region - 10%	

<b>Summary of Approved Projects</b> As of March 2010		
No. of Projects	Type of Projects	Amount (in Billions)
2,254	Electrification Projects	2.30
1,011	Development and Livelihood Projects	0.87
900	Reforestation, Watershed, Management, Health and/or Environment Enhancement	1.12

Note: Excluding Mirant projects and advanced financial assistance

## APPENDIX “B”

### FLOW CHART OF ACTIVITIES FOR THE AVAILMENT OF THE NON-ELECTRIFICATION FUND (DLF & RWMHEEF)



PP COMREL – Power Plant Community Relations Officer  
ERD – Energy Resource Developer

The estimated number of days is based on the assumption all requirements have been completed. The whole process of obtaining signatures on the MOA takes 30 days.



## APPENDIX “C”

### DEVELOPMENT PROJECTS

- Streetlighting
- Farm to Market Road
- Multi-Purpose Pavement
- Farm produce collection and buying section
- Rice/Corn Milling
- Communal Irrigation System
- Small water impounding projects
- Fishports
- Seawalls
- Day Care Center
- School Building
- Public market
- Slaughterhouse
- Public drainage/sewerage system
- Bridge
- Flood control measures

### LIVELIHOOD PROJECTS

- Food production/processing
- Ice plant
- Livestock and poultry production
- Handicraft production
- Aquaculture
- Skills training for LGU administered livelihood project
- Vegetable seed farm
- Small scale services livelihood projects
- Corn/Rice Milling
- Carpentry/Furniture Shop
- Radio, Refrigerator and TV servicing
- Garment Weaving
- Engine mechanic services
- Electrical wiring and design
- Dressmaking
- Gold and silver trading and jewelry making
- Blacksmith shop
- Welding shop

### ENVIRONMENT ENHANCEMENT PROJECTS

- Fire truck
- Waste Management Equipment
  - ✓ Garbage
  - ✓ Dump Truck
  - ✓ Bulldozer
  - ✓ Backhoe/Loader
- Construction/ Installation of Waste Treatment Facility
- Sanitary Landfill Development
- Development of Waste Recovery Warehouse
- Construction of Concrete Sanitary Waste Water Collection Facility

### HEALTH RELATED PROJECTS

- Water supply system
- Municipal Hospital
- Medical equipment/facilities
- Medicinal plant gardens

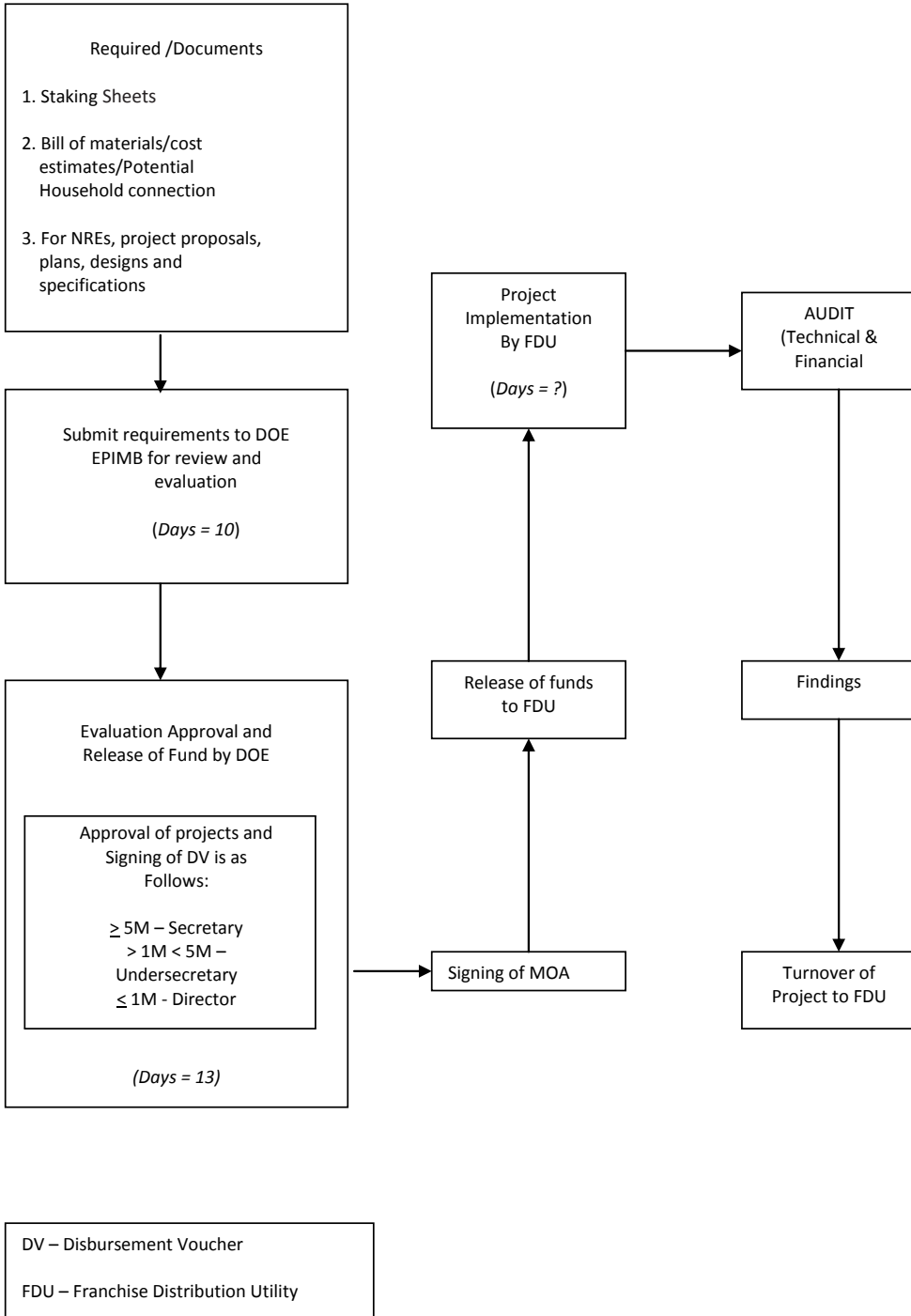
### REFORESTATION & WATERSHED MANAGEMENT PROJECTS

- Improvement of forest cover
- Vengineering measures
- Community-based forestry management
- Agro-forestry
- Conservation of mangroves
- Seedling nursery

Funding for the above-listed projects shall include costing of materials, equipment and labor, exclusive of payment for salaries, wages, honoraria, allowances, administrative expenses, transportation, and travel expenses, and other similar expenses that may be incurred in the processing and release of funds, and implementation of said projects.

## APPENDIX "D"

### FLOW CHART OF ACTIVITIES FOR THE AVAILMENT OF THE ELECTRIFICATION FUND



## APPENDIX “E”

### SUPPORTING DOCUMENTS FOR REFORESTATION, WATERSHED MANAGEMENT, HEALTH AND/OR ENVIRONMENT ENHANCEMENT PROJECT PROPOSALS

DOCUMENTS	Sursary/ Reforestation/ Agroforestry	Erosion Structural Measures	Health Center/ Medical Facility/ Equipment	Water Supply System	Communal Toilets	Solid Waste Management	Training
1 Resolution from the concerned sanggunian endorsing the project identified during the LGU consultation	X	X	X	X	X	X	X
2 Feasibility Study for projects <sup>1</sup>	X	X	X	X	X	X	X
3 Justification of the project to include the following which should be stipulated and/or attached in the project	X	X	X	X	X	X	X
a Total areas to be planted & type and number of flora species to be planted	X						
b List of existing medical and/or health personnel in the area and existing proposed health and/or medical-related activities			X				
c Certification from local water utility of the adequacy of water supply				X			
d Certification from DOH/local water utility for the potability of water				X			
e List of existing number of dump/garbage trucks						X	
f Certification from the LGU of the existing dump site						X	
g Average daily volume of garbage						X	
h Target beneficiaries	X	X	X	X	X	X	X
i Project location sketch map	X	X	X	X	X	X	X
j Disbursement schedule, detailed cost estimate/bill of materials/detailed specifications/program of work/plans/drawing duly signed by the Municipal/Provincial Engineer and Mayor/Governor	X	X	X	X	X	X	X
k Cooperative/association's latest financial audit (6 mos. To 1 year prior to project application) <sup>2</sup>	X	X	X	X	X	X	X
l Three - five - year projected income statement	X	X	X	X	X	X	X
m SEC/CDA/DOLE Certificate of Rgistration <sup>2</sup>	X	X	X	X	X	X	X
n Training Design							X
o Notarized copy of Deed of Donation/Proof of Transfer of Private Property/Transfer Certificate of Title or equivalent legal documents justifying public ownership of lot/site	X	X	X	X	X	X	X
p Municipal Health Officer/DOH endorsement to manage the project and Certification that there is no existing health center in the area/feasibility & standard of equipment/facilities			X				
q Endorsement/Certification from the concerned DENR Office/Watershed Administrator as to the feasibility of the project	X						
r Relevant permits from concerned agencies	X	X	X	X	X	X	X

1 as applicable

2 for projects with cooperative/association as project implementor

3 training as a component of a project or solely training

## APPENDIX “F”

### SUPPORTING DOCUMENTS FOR DEVELOPMENT AND LIVELIHOOD PROJECT PROPOSAL

REQUIREMENTS	TYPE OF PROJECT		
	Infrastructure	Income Generating Livelihood Projects	Training <sup>3</sup>
1 Resolution from the concerned Sanggunian endorsing the project Identified during the LGU consultation	X	X	X
2 Feasibility study for projects <sup>1</sup>	X	X	X
3 Sketch/location map of the project	X	X	X
4 Disbursement schedule, detailed cost estimate, bill of materials, plans drawings, specifications, program of work duly signed by the Municipal/Provincial Engineer and Mayor/Governor	X	X	X
5 List of cooperative/association members/borrowers with corresponding amount to be borrowed and propose <sup>1</sup>		X	
6 Cooperative/association's latest financial statement (6 mos - 1 yr prior to project application) <sup>2</sup>	X	X	X
7 Three - five - year projected income statement		X	
8 Training Design			X
9 Notarize copy of Deed of Donation/Proof of Transfer of Private Property/Transfer Certificate of Title or equivalent legal documents justifying public ownership of lot/side	X		
10 Sanggunian resolution stipulating date of transfer of property, existing use of transferred property	X		
11 Certification of road classification from the concerned host LGU's engineer's office	X		
12 Certified True Copy of SEC/CDA/DOLE Certificate of Registration <sup>2</sup>	X	X	X
13 Relevant permits from concerned agencies <sup>4</sup>	X	X	X

1 as applicable

2 for projects with cooperative/association as project implementor

3 training as a component of a project or solely training

# APPENDIX "G"

FORM 2  
SAMPLE FORMAT

## PROJECT PROPOSAL

- I. Project Title
- II. Source of Funds Under E.R. 1-94
  - Name of power plant
  - Fund Type (DLF, RWHEEF-Resettlement/Barangay/Municipality/City/Province/Region)
  - Available Fund
- III. Beneficiaries
  - Name of local government unit (LGU)
  - Number of resident/household/members
- IV. Objectives
- V. Rationale/Justification
- VI. Project Profile
  - A. Project Description
    - Area covered (number of hectares)
    - Type of species, mortality rate/sustainability
    - Monitoring scheme
    - Roles of DENR, LGU, PO
    - Land/classification
  - B. Project Location
  - C. Summary of Project Cost (Attach detailed Bill of Materials/Labor/Hauling/Equipment Cost, and Disbursement Schedule)
  - D. Project Implementator/Implementing Agency
- VII. Project Implementation

Activities

Time Frame

Prepared By:

Endorse By:

\_\_\_\_\_

\_\_\_\_\_

## APPENDIX “H”

### Benefits to Host Communities Pursuant to Local Government Code

- Chapter II, Section 289 to 294 of the Local Government Code.

### Legal Basis

- Section 66 of Republic Act No. 9136, otherwise known as “Electric Power Industry Reform Act of 2001”, as detailed in rule 29, Part B of the IRR of EPIRA.

### Scope of Application

The LGUs hosting the national wealth shall have an equitable share the proceeds derived from the utilization and development of national wealth, including sharing the same with the inhabitants by way of direct benefits.

### Amount of Share of Local Government Units

Any government agency or government-owned or controlled corporation and private corporation or entities engaged in the utilization and development of the national wealth are required to provide share to the host LGUs, based on the following formula, whichever will produce a share higher for the LGU.

- One percent (1%) of the gross sales or receipts of the preceding calendar year; or
- Forty percent (40%) of the national wealth taxes, royalties, fees or charges derived by the government agency or government owned and controlled corporation and privately-owned corporation or entities.
  - a) Eighty percent (80%) of the proceeds shall be applied solely to lower the cost of the electricity either through subsidy or non-subsidy scheme or combination of both.

### Nature of Benefits

#### Non-subsidy Scheme

Non-subsidy scheme may take the form but not limited to electrification, technical upgrading and rehabilitation of distribution lines to reduce electricity losses use of energy saving devices, and support of the infrastructure facilities servicing the needs of the public which can all redound to the reduction of the electricity rate of the area.

#### Subsidy Scheme

Subsidy scheme will be directly utilized to subsidize cost of power used by the consumers. This may be applied with or without ceiling or at graduated rates (per kWh per level of consumption) in the following form which the host LGU may choose from.

Subsidy per customers, an equal or predetermined level or rate of subsidy per qualified customer:

- All consumer types
- Residential consumer only; and
- Other preferred types of consumer combinations, such as commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.

Subsidy of power consumption, which amount of subsidy depends on the magnitude of power consumption of qualified consumers:

- All consumer types
- Residential consumer only; and
- Other preferred types of consumer combinations, such as commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.

- b) Twenty percent (20%) of the proceeds shall be utilized for the development and livelihood projects which shall be appropriated by their respective Sanggunian.

Allocation of Shares

<b>For non-highly urbanized city</b>		<b>For highly urbanized city</b>	
* Host Barangay	- 35%	* Host Barangays	- 35%
* Host Municipality/City	- 45%	* Host City/ies	- 65%
* Host Province	- 20%		

For energy resource located in two (2) or more provinces, or in two (2) or more municipalities/cities or two (2) or more barangays, their respective shares shall be appropriated on the basis of the following:

- Population - 70%
- Land area - 30%

Where the land area of the host barangays found within the technically delineated energy resource area and where the population refers to the population of host barangays found wholly or partially within the technically delineated energy resource.

Monitoring a) The Department of Interior and Local Government (DILG) shall monitor the compliance of host LGUs. To assist in the monitoring or compliance, all host LGUs of energy projects are required to submit the following:

- The scheme of electricity rate reduction adopted by the host LGU (with proper documentation) based on the prescription in the DILG-DOE Joint Circular 95-01 dated 31 October 1995 at the start of the use of fund or upon the amendment of scheme by the respective LGU councils; and
- Summary of transactions thirty (30) days after end of each quarter.

The DILG shall furnish the DOE the above information within fifteen (15) days from the date of the reporting period.

b) The Commission on Audit (COA) shall conduct yearly audit of the national wealth proceeds consistent with its responsibility to examine all accounts pertaining to uses of funds and property owned or held in trust by the government or any of its agencies as mandated under Section 2 of Presidential Decree No. 1445 of 1976.

c) In the event of violation or non-compliance with the provisions of the DILG-DOE Joint Circulars 95-01 and 89-01, and other relevant issuances, the DILG may, upon prior notice and hearing, order the project proponent the non-remittance of the royalty payment to the host LGU concerned pending completion of the investigation of the concerned LGY if the project proponent is a government-owned and controlled corporation (GOCC); or notify the Department of Budget (DBM) regarding such violation and order the non-release of the LGU shares if the project proponent is a private company. The unremitted funds shall be deposited in a government bank under escrow.

## APPENDIX "I"

### SUBSIDY PER CONSUMER

DATA REQUIREMENT:

- 1) Number of consumer per consumer type (Residential, Commercial, Industrial, Public Bldgs. Street Lights, etc)
- 2) Amount of share in national wealth tax for distribution to consumers

ILLUSTRATION:

DATA ASSUMPTIONS:

A. TYPE OF CONSUMER		NUMBER
Residential	(Rn)	100
Commercial	(Cn)	10
Industrial	(In)	1
Public Buildings	(Pn)	2
Street Lights	(Sn)	<u>15</u>
TOTAL		128
B. NATIONAL WEALTH TAX (NWT)		P 50,000

COMPUTATIONS:

1. ALL CONSUMER TYPES

$$\begin{aligned}
 \text{SUBSIDY (S)} &= \frac{\text{NWT}}{\text{TN}} \\
 &= \frac{50,000}{128} \\
 &= 390.63 \text{ per consumer*}
 \end{aligned}$$

2. COMBINATION : Residential, Public Buildings, Street Lights only

$$\begin{aligned}
 \text{SUBSIDY (S)} &= \frac{\text{NWT}}{\text{Rn} + \text{Pn} + \text{Sn}} \\
 &= \frac{50,000}{100 + 2 + 15} \\
 &= \frac{50,000}{117} \\
 &= 427.35 \text{ per consumer*}
 \end{aligned}$$

3. ALL CONSUMERS BUT WITH AUXILIARY OPTION THAT AMOUNT OF SUBSIDY PER CONSUMER MUST BE LOWER BY 35% THAN RESIDENTIAL PUBLIC BLDGS., AND STREET LIGHTS.

$$\begin{aligned}
 \text{SUBSIDY (S)} &= \frac{\text{NWT}}{\text{RN} + \text{Pn} + \text{Sn} + \{(\text{Cn} + \text{In}) \times (1 - .35)\}} \\
 &= \frac{50,000}{100 + 2 + 15 + \{(10 + 1) \times .63\}} \\
 &= \frac{50,000}{117 + 7.15} \\
 &= \frac{50,000}{124.15} \\
 &= 402.74 \text{ per residential, public bldgs, \& street lights} \\
 &\quad \text{cosumers*}
 \end{aligned}$$



SUBSIDY FOR EACH COMMERCIAL & INDUSTRIAL CONSUMER:

$$= 402.74 \times (1 - 0.35) = 402.74 \times 0.65 = 261.78^*$$

4. ALL CONSUMERS BUT WITH AUXILIARY OPTION THAT COMMERCIAL AND INDUSTRIAL CONSUMERS SUBSIDY MUST BE P 100.00 ONLY

$$\begin{aligned} \text{SUBSIDY (S)} &= \frac{\text{NWT} - (\text{Cn} + \text{In}) \times 100.00}{\text{Rn} + \text{Pn} + \text{Sn}} \\ &= \frac{50,000 - (10 + 1) \times 100}{100 + 2 + 15} \\ &= \frac{50,000 - 1,100}{117} \\ &= \frac{48,900}{117} \\ &= 417.95 \text{ per residential, public bldgs. \& street lights consumer} \end{aligned}$$

NOTE: The 35% mentioned in # 3 and P100.00 in #4 are variables that can be changed depending on intended objective of the LGU.

- maximum amount of subsidy that could be extended to each consumer, can still be limited to a ceiling desired especially if share per consumer is too big depending on LGU objective (i.e., avoid waste in energy consumption).

### SUBSIDY PER POWER CONSUMPTION

DATA REQUIREMENT:

- 1) Total kwh consumption for each consumer type
- 2) Amount of share in national wealth tax for distribution to consumers
- 3) Rate per kwh (Rkwh)

ILLUSTRATION:

DATA ASSUMPTIONS:

A. TYPE OF CONSUMER		NUMBER
Residential	(Rk)	5,000
Commercial	(Ck)	1,500
Industrial	(Ik)	3,000
Public Buildings	(Pk)	700
Street Lights	(Sk)	<u>900</u>
TOTAL CONSUMPTION	(Tk)	<b><u>11,100</u></b>
B. NATIONAL WEALTH TAX (NWT)	P 35,000	
C. Rate per kwh (RKwh)	P 3.50	

COMPUTATIONS:

1. ALL CONSUMER TYPES  
SUBSIDY (S) -  $\frac{\text{NWT}}{\text{Tk}}$

$$= \frac{35,000}{11,100}$$

$$= 3.1532 \text{ per kwh}$$

SUBSIDY PER CONSUMER = Computed subsidy (Rkwh) x kwh consumption

$$2. \text{ COMBINATION SUBSIDY (S)} = \frac{\text{NWT}}{\text{Rk} + \text{Pk} + \text{Sk}}$$

$$= \frac{35,000}{5,000 + 700 + 900}$$

$$= \frac{35,000}{6,600}$$

$$= 5,3030 \text{ per kwh}$$

In this case, computer subsidy is more than the rate, thus to compute subsidy per consumer:

SUBSIDY PER CONSUMER = Rate per kwh (Rkw) x Kwh consumption

3. ALL CONSUMERS BUT WITH AUXILIARY OPTION THAT CONSUMPTION IN EXCESS OF 200 KWH PER MONTH IS NOT ELIGIBLE FOR SUBSIDY

ADDITIONAL DATA REQUIREMENT: Actual Kwh Consumption of all consumers consuming equal or less that 200 kwh.

DATA ASSUMPTIONS. Total Kwh Consumption of consumers consuming equal to or less than 200 kwh is 7,800 kwh distributed as follows:

Rk	5,000
Ck	1,200
Lk	
Pk	700
Sk	<u>900</u>
Tk	7,800

$$\text{SUBSIDY} = \frac{\text{NWT}}{\text{Tk}}$$

$$= \frac{35,000}{7,800}$$

$$= 4.4872 \text{ per kwh}$$

In this case, computed subsidy is more that the rate, thus to compute subsidy per consumer

SUBSIDY PER CONSUMER = Rate per Rkwh) x Kwh consumption

NOTE: Auxiliary option of having a ceiling of 200 kwh per month is discretionary, other figures could be designed based or fitted to consumption pattern of consumers in the concerned area or based on intended effect to prevailing consumption pattern.

4. ALL CONSUMERS BUT WITH AUXILIARY OPTION THAT AT SPECIFIED LEVELS OF CONSUMPTION, DIFFERENT LEVELS OF ^

ADDITIONAL DATA REQUIREMENT:

Range of power consumption

Frequency distribution (kwh) of all consumers' consumption at each range

Discount rate for each range

DATA ASSUMPTIONS:

Pre-Determined Discount Rate at each Range set, but no discount for

	Range of Monthly Kwh Consumption		Discount Rate (%)		Actual Kwh Consumption
(R1)	0 - 50	(D1)	100	(K1)	9,400
(R2)	51 - 100	(D2)	75	(K2)	12,800
(R3)	101 - 200	(D3)	50	(K3)	10,650
(R4)	201 & above	(D4)	0	(K4)	<u>13,250</u>
					46,100

$$\begin{aligned}
 \text{SUBSIDY (S)} &= \frac{\text{NWT} - (\text{K1} \times \text{Rkwh})}{(\text{K2} \times \text{D2} + (\text{K3} \times \text{D3}))} \\
 &= \frac{35,000 - (9,400 \times 3.50)}{(12,800 \times .75) + (10,650 \times .50)} \\
 &= \frac{36,000 - 32,900}{9,600 + 5,325} \\
 &= \frac{2,100}{14,925} \\
 &= 0.140\% \text{ per kwh}
 \end{aligned}$$

SUBSIDY FOR EACH KWH:

0 - 50 KWH	=	P 3.50	x	100%	=	P 3.50
51 - 100 KWH	=	P0.1407	x	75%	=	P 0.1055
101 - 200 KWH	=	P0.147	x	50%	=	P0.07035

SUBSIDY FOR R1 ( 0-50 KWH)	=	9,400	KWH	x	P3.50	x	100%	=	32,900
SUBSIDY FOR R2 – 100 KWH)	=	12,800	KWH	x	P0.01055	=	1,361		
SUBSIDY FOR R3 (101-200 KWH)	=	10,650	KWH	x	P0.07035	=	<u>749</u>		
								35,000	

NOTE: Range of monthly kwh consumption, discount rates and level of consumption set for availment of subsidy (in this case, the 200 kwh) are variables depending on the discretion of the LGU.

## APPENDIX "J"

**Republic of the Philippines**  
**DEPARTMENT OF ENERGY**  
**Energy Center, Merritt Road, Fort Bonifacio, Taguig City**

**GOVERNMENT ENERGY MANAGEMENT PROGRAM**  
**Monthly Electricity Consumption Report**  
 For the Month of \_\_\_\_\_, 200\_

Agency: \_\_\_\_\_ TelephoneNos.: \_\_\_\_\_

Address: \_\_\_\_\_ FaxNos.: \_\_\_\_\_

A	B	C	D	E	F	G		H
Building Description	Gross Area (square meters)	Air-Conditioned Area (square meters)	Number of Occupants	January-June 2004 Average monthly consumption, kWh	Monthly Consumption, kWh	Monthly Savings*		
						kWh	Percent, %	

(Add rows when necessary)

kWh Savings (G) = E - F

$$\% \text{ Savings (H)} = \frac{G}{E} \times 100$$

Prepared by: \_\_\_\_\_  
*(Energy Conservation Officer)*

*(Start of Submission is September 2005 onwards)*

**For further information, please contact:**

**DEPARTMENT OF ENERGY  
LEGAL SERVICES**

Energy Center, Rizal Drive cor. 34th St.  
Bonifacio Global City

[www.doe.gov.ph](http://www.doe.gov.ph)

**ATTY. ARTHUS T. TENAZAS**

Director

Tel. No. 840 2273

**ATTY. ISIDRO V. ALMENTEROS**

Chief, General Legal Services Division

Tel. No. 840 2142

**ATTY. GABRIEL B. CORPUZ**

Chief, Downstream Conventional Energy Legal Services Division

Tel. No. 840 2242

**ATTY. BEN JULIUS G. GAGNI**

Chief, Upstream Conventional Energy Legal Services Division

Tel. No. 840 2132

**ATTY. MYRA FIERA F. ROA**

Chief, Power Legal Services Division

Tel. No. 541 5517

**ATTY. DON G. VILLANUEVA**

Chief, Renewable Energy Legal Services Division

Tel. No. 892 4619