


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



IN THE MATTER OF THE  
DECLARATION OF THE RETAIL  
COMPETITION AND OPEN ACCESS  
PURSUANT TO SECTION 31 OF  
REPUBLIC ACT NO. 9136, OTHERWISE  
KNOWN AS THE ELECTRIC POWER  
INDUSTRY REFORM ACT OF 2001,  
AND SECTIONS 3 AND 4 OF ITS  
IMPLEMENTING RULES AND  
REGULATIONS

ERC CASE NO. 2011-004 RM

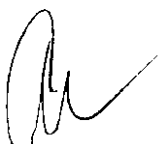
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D O C K E T E D  
Date: JUN 13 2011  
By: 

**DECISION**

The restructuring and deregulation of the electric power industry as mandated by Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), call for the changing of roles and responsibilities among the stakeholders in the industry. For this Commission, as created and empowered by EPIRA, from its traditional role as economic regulator, it is expected to transform and to expand its focus to creating rules and processes to stimulate competition.

In line with this expectation and consistent with its regulatory mandate to balance stakeholders' interests by ensuring a level playing field within the competitive retail electricity market and at the same time, protecting long-term consumer interests, the Commission has issued a number of rules and regulations to put in place a comprehensive legal and procedural framework for the competitive retail market. This framework covers and addresses all market concerns and issues such as the registration and qualifications of the suppliers



and customers in the market; provision of a continuous supply of electricity for the protection of the customers; the required conduct and behavior of all market participants; and the commercial transfer of customer from one supplier to another.

Specifically, on July 13, 2005, the Commission issued the **Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers** (formerly, the Guidelines for the Issuance of Licenses to Retail Electricity Suppliers), which prescribed the qualifications and criteria for licensing the Retail Electricity Supplier (RES), including, among other requirements, a demonstration of their technical and financial capability and creditworthiness. The said Rules introduced the new entity known as the Local RES and as provided therein, distribution utilities (DUs) that intend to set up a Local RES business should inform the Commission prior to its operation as such. The said Rules, likewise, provide that should there be entities with existing supply contracts with end-users who qualify as contestable customers, said entities must, within ninety (90) days from the declaration of open access, secure an RES license from the Commission. Subsequent amendments to said Rules were made on February 15, 2011.

On June 6, 2006, the Commission issued the **Code of Conduct for Competitive Retail Market Participants** (Code of Conduct), which established standards of behavior for marketing electricity by the suppliers in order to protect the contestable customers. It also provides limitations on the relationship between the DU and its Local RES and ensures that the DU delivers non-discriminatory service to all customers, regardless of their choice of RES. In the said Code of Conduct, the Commission introduced the concepts of the cooling-off

period, the matter of the disclosure statements and other measures for the protection of contestable customers.

To guarantee the continuous supply of electricity to contestable customers in the event of the RES' inability to provide electricity, the Commission approved the **Rules for the Supplier of Last Resort (SOLR)** on June 21, 2006. The said Rules likewise provided that a contestable customer shall fall under SOLR service should it fail to enter into a contract with an RES or a Local RES within thirty (30) days prior to the start of the retail market. While making the SOLR service available for contestable customers, the Rules were issued purposely to encourage contestable customers to exercise their right to choose their supplier of electricity upon the commencement of the retail market.

The Commission also issued the **Competition Rules and Complaint Procedures** promulgated on June 23, 2006 which prohibit anti-competitive behavior and abuse of market power and provide for the appropriate penalties and remedies for such violations.

The **Business Separation Guidelines (BSG), as Amended** were also issued to prescribe the clear separation of business operations and accounts between the regulated and non-regulated business activities of electric power industry participants. The Commission approved these Guidelines on September 22, 2003 and introduced amendments thereto on June 21, 2006 to incorporate additional business segments and activities by the market players.

The **Distribution Services and Open Access Rules (DSOAR)** was approved on January 18, 2006 and amended on February 22, 2010. These Rules provided guidance on the provision of services by a DU to captive and

contestable customers, the RES, other DUs and generators under the new competitive environment. It also specified that the DU shall be the meter service provider for all contestable customers within its franchise area for the initial phase of retail competition, and that it shall install the required metering facilities for such customers. The DU is mandated to submit the meter reading data of all contestable customers to the RES through a central registry for the RES' billing purposes.

Central to the operation of a competitive retail electricity market is the exercise by the contestable customer of its power to choose or the ability to switch from one supplier to another. The ***Rules on Customer Switching (RCS)***, approved by the Commission on September 26, 2007, prescribed the standardized business rules for interactions between the DU, a central registry, RES/Local RES and the SOLR relating to the commercial transfer of a customer from one competitive electricity supplier to another.

Inasmuch as the SOLR business is a regulated service, the Commission approved on October 10, 2007 the ***Rules on Rate Filing by the SOLR*** prescribing a uniform filing system for applications by the SOLR for the approval of rate/charges to be imposed upon the affected contestable market that shall fall under the SOLR service.

On January 23, 2008, the Commission also issued the ***Rules for Contestability*** to clarify and establish the conditions and eligibility requirements for the end-users' transition to contestability status. These Rules also outlined the procedure on how qualified contestable customers are to be informed of their contestability status.

To sustain a dynamic retail electricity market, the Commission shall continuously review the foregoing rules and regulations and determine if there is necessity to amend or supplement them to create such environment most conducive to competition.

### **MANDATE TO DECLARE RETAIL COMPETITION AND OPEN ACCESS**

Section 31 of the EPIRA specifically laid down the pre-conditions to open access and retail competition in this manner:

“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.”

In relation to this, Section 3, Rule 12 of the EPIRA Implementing Rules and Regulations (IRR) mandates the Commission to declare the initial implementation of Open Access, as follows:



"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 the 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."

The Commission earlier ventured into issuing definitive timelines leading to the Open Access Date<sup>1</sup>, to allow the stakeholders in the retail market the benefit of making informed decisions. Due, however, to unavoidable delays in the implementation and fulfillment of the aforesaid pre-conditions, more particularly

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<sup>1</sup>ERC Resolution No. 02, Series of 2004



the privatization process envisioned under Section 47 (i) of the EPIRA, the Commission revised said timelines and resorted to merely providing indicative timelines for the establishment of the retail market. Thus, the Commission issued Resolution No. 3, Series of 2007, entitled "A Resolution Indicating the Timeline for Full Retail Competition and Open Access in Luzon". In said Resolution, the Commission reiterated the legal pre-conditions to Open Access and identified two (2) other vital requirements that must be in place prior to commencement of the market, viz:

1. The adequacy and establishment of all necessary infrastructures including, but not limited to: transmission networks, generation supply and the customer switching system; and
2. The promulgation of all pertinent rules and regulations governing open access and retail competition.

#### **COMPLIANCE WITH THE NOTICE AND HEARING REQUIREMENT**

Pursuant to its mandate and in compliance with the "due notice and public hearing" requirement under Section 3, Rule 12 of the EPIRA IRR, the Commission *motu proprio* initiated the instant proceedings with the issuance on February 18, 2011 of a Notice of Public Hearing, setting public hearings on March 7 to 11, 2011 to determine whether or not Open Access and Retail Competition may already be declared. The said Notice of Public Hearing was published in the February 19 and 25, 2011 issues of the Manila Times and Daily Tribune.

On March 2, 2011, the Commission issued subpoenas to the Department of Energy (DOE), the National Power Corporation (NPC), the Power Sector Assets and Liabilities Management Corporation (PSALM), the National Grid



Corporation of the Philippines (NGCP) and the Philippine Electric Market Corporation (PEMC), directing them to submit pertinent information and/or documents relating to the pre-conditions for the declaration of Open Access and to attend and testify thereon at the scheduled public hearings.

At the March 7, 2011 initial hearing, the DOE, NPC, PSALM, PEMC and NGCP entered their respective appearances. Masinloc Power Partners Co. Ltd. (MPPCL), the Philippine Chamber of Commerce and Industry (PCCI), Manila Electric Company (MERALCO) and Aboitiz Energy Solutions, Inc. (AESI), likewise, intervened and entered their respective appearances. During the hearing, PSALM presented its witness, Atty. Conrad S. Tolentino, its Vice President for Asset Management Group, who conducted an expository presentation regarding the provisions in the EPIRA related to Open Access and Retail Competition, Joint Congressional Power Commission (JCPC) Resolution No. 2002-2 adopted on August 29, 2002 and its computation of the privatization levels using different sets of assumption. After the expository presentation, Atty. Tolentino was presented as a witness to identify his Affidavit and the documents mentioned therein and to testify on: 1) the status of the privatization of generation assets pursuant to Section 31 (d) of the EPIRA; 2) the status of PSALM's efforts in connection with the transfer of the management and control of the total energy output of power plants under contract with NPC to the IPPAs pursuant to Section 31 (e) of the EPIRA; 3) the privatization level with regard to PSALM/NPC owned generating plants pursuant to Section 31 (d) of the EPIRA; and 4) the privatization level with regard to the appointment of IPPAs pursuant to Section 31 (e) of the EPIRA.

MERALCO and PCCI cross-examined the witness. Thereafter, the Commission propounded clarificatory questions. Subsequently, PSALM was



directed to submit a copy of the Independent Power Producer (IPP) Contract for San Roque Hydroelectric Multipurpose Project not later than March 9, 2011. In compliance therewith, it filed its "*Compliance (With Request for Confidential Treatment of Information)*" praying that the submitted "*Power Purchase Agreement for San Roque Hydroelectric Multipurpose Project Between National Power Corporation and the consortium of Marubeni Corporation, Sithe Philippines Holdings, Ltd. and Italian-Thai Development Public Company Limited*" be treated as confidential in perpetuity for purposes of Rule 4 of the Commission's Rules of Practice and Procedure.

NPC and DOE manifested that they do not intend to present any witness. DOE partly adopted the presentation made by PSALM as well as the testimony of its witness.

PEMC then presented its witness, Atty. Rachel Anosan, its Training and Communications Manager, who testified in compliance with the *Subpoena Duces Tecum and Ad Testificandum* issued by the Commission on March 1, 2011, particularly on the list of all the generation companies and their corresponding registered capacities. It moved that its submission regarding the total hourly demand for the past three (3) months per participant basis be treated as confidential information. The Commission propounded clarificatory questions and clarified that it only requested for the total hourly demand in Luzon and Visayas but not per participant. Thus, PEMC moved that it be allowed to withdraw the said data and submit at the next hearing the total hourly demand in Luzon and Visayas. Said motion was granted.

PEMC presented another witness, Mr. Isidro E. Cacho, Jr., its Planning Manager under Training Operations Department, who testified on its compliance

with the *Subpoena Duces Tecum and Ad Testificandum* issued by the Commission on March 1, 2011, particularly, on the hourly data on the maximum energy offer per plant for all the plants in Luzon and Visayas.

Thereafter, NGCP presented its witness, Mr. Michael N. Pascual, its Section Head of Systems Planning Section – Network Planning Division of the Luzon Systems Operations Department, who testified on: a) the data on the transmission line and/or equipment per actual congestion or loading beyond the normal operating limits that occurred in Luzon and the Visayas Grids for the past three (3) months; and b) the line congestion in the Luzon Grid. The Commission then propounded clarificatory questions.

During the hearing on March 8, 2011, the Commission directed all parties of record to submit, not later than March 31, 2011, their respective Legal Memoranda on the following issues:

1. The particular agency's interpretation of the provisions of Section 31 (d) and (e), in relation to Section 47 of the EPIRA, including related provisions in its IRR;
2. The respective agency's calculation of the percentage of privatization of: (a) the generating assets of NPC; and (b) the transfer of contracts with NPC to the IPP Administrators, both on the basis of their respective interpretations; and
3. Their respective positions on whether or not the conditions under Sections 31 (d) and (e) of the EPIRA have been fulfilled by virtue of their own interpretations.

Subsequently, NGCP presented the following witnesses: 1) Mr. Redi Allan Remoroza, its Head of the Luzon System Planning Division, who testified on the projects undertaken and to be undertaken to address the congestion constraints in the Luzon Grid; 2) Mr. Christian Ereno, its Head of the Visayas System Planning Division, who testified on the list of projects undertaken and proposed



to be undertaken to address congestion or constraint in the Visayas Grid; 3) Mr. Roderick Fernandez, its Head of the Account Portfolio-Network Customer Access and Relations of the Revenue Regulatory Affairs Department, who testified on the contractual arrangement made for the procurement of Ancillary Services of NGCP, such as ASPAs with NPC that were signed by TRANSCO and assigned to NGCP; 4) Ms. Edith J. Palencia, from its Operations and Planning Section of Luzon Systems Operation, who testified on the actual hourly operating margin set for the Luzon and Visayas grids for the past three (3) months; and 5) Mr. Jose B. Amper, its Head Engineer of Operations Planning Section, who testified on the actual hourly operating margin set for the Visayas Grid. PCCI conducted its cross-examination on some of the witnesses while the Commission propounded clarificatory questions.

In addition, the Commission directed NGCP to submit a list of transmission lines and equipment which have breached the seventy-five percent (75%) thermal limits based on its simulated power flows of the daily peak with consideration of the N-1 contingency and adoption of the five (5) worst case scenarios, for the next three (3) weeks, both for the Luzon and Visayas Grids.

PEMC, likewise, presented its witness, Mr. Millan Libongco, its Head of Billing, Settlements and Metering Department, who testified on the total metering data for the past three (3) months for Luzon and Visayas. PCCI cross-examined the witness.

The DOE filed a *"Manifestation With Formal Entry of Appearance"*.

On March 14, 2011, PSALM filed its *"Compliance"* to prove the actual turn-over of privatized plants and/or administration of contracted capacities/contracted

energy to the successor generating companies/other government agencies and IPPA.

On March 28, 2011, the Commission issued an Order denying PSALM's request for confidential treatment of the Contract covering the San Roque plant.

On various dates, the parties submitted their respective Legal Memoranda and other compliances with the data requests of the Commission.

During the April 6, 2011 hearing, NGCP recalled the following witnesses: 1) Mr. Remoroza; and 2) Mr. Ereno. PSALM, PEMC, MERALCO and PCCI waived their right to cross-examine the said witnesses. Its two (2) other witnesses, Mr. Amper and Ms. Palencia, were not available to testify at the said hearing, while its other witness, Mr. Fernandez, is no longer connected with NGCP.

Thereafter, PEMC recalled its witness, Mr. Cacho, who was cross-examined by PCCI. PSALM did not conduct a cross-examination on the said witness.

For the last two (2) remaining witnesses of NGCP who have not been cross-examined, the parties would just file written interrogatories in lieu of cross-examination. PCCI manifested that it would no longer file written interrogatories while MERALCO manifested that it intended to file written interrogatories for all the witnesses.

PSALM then recalled Atty. Tolentino who identified additional documents that were submitted to the Commission, such as the Certificates of turn-over of

assets to winning bidders, Certificates of turn-over for the IPP Contracts and list of IPP power plants with their contracted energy and equivalent energy. MERALCO cross-examined the witness. MPPCL, AESI and NGCP cross-examined the said witness. Thereafter, the Commission propounded clarificatory questions. The parties were given ten (10) days from receipt of the other parties' Legal Memoranda to file their respective final comments/rejoinders. PSALM was directed to submit its privatization plan which has been endorsed to the JCPC and approved by the President of the Philippines in a Memorandum dated October 4, 2002.

The Commission then discussed the remaining matters for resolution relative to the declaration of Open Access and the timelines, such as: 1) the rules or policies that would provide for the process and assignment in terms of accounting, billing and settlement of retail competition transactions within a period of six (6) months; 2) the setting up of the business to business system within a period of nine (9) months; 3) the information/dissemination campaign for all the stakeholders; 4) the determination as to who would be the SOLR in a particular franchise area and what the SOLR rate would be; 5) the certification of the qualified contestable consumers for Retail Competition; 6) the confirmation of the local RES; and 7) the determination of the Value Added Tax (VAT). MERALCO made some comments on the Commission's exposition, particularly on the timelines. The other parties were allowed to make their respective comments thereon in writing, if they so desire, within ten (10) days from said date of hearing. Thereafter, the instant case was deemed submitted for resolution.

On April 11, 2011, the Federation of Philippine Industries, Inc. sent a letter dated April 7, 2011 stating, among others, that the instant proceedings will validate the reported looming power supply shortage which the country would

supposedly be facing vis-à-vis the latest grid update (April 1, 2011) from NGCP that there is an alleged 1689 MW reserve (evening) in power supply. Its letter further stated that if the Commission resolves that all conditions have already been met and declares an Open Access, a mechanism should be adopted that will allow the suspension of the Open Access in the event of subsequent power shortage since it is still in the transition process.

MERALCO filed its "*Written Interrogatories*" for NGCP, DOE and PEMC on April 13, 2011.

On April 15, 2011, in compliance with the directive of the Commission during the April 6, 2011 hearing, PSALM filed its "*Compliance*".

On April 18, 2011, AESI filed its "*Manifestation (Re: Timeline for Implementation of Retail Competition and Open Access)*" and "*Consolidated Comment*" while MPPCL filed its "*Written Interrogatories to NGCP*". On the same date, MERALCO filed its "*Supplemental Legal Memorandum*".

On April 20, 2011, MERALCO filed its "*Comment (On Remaining Matters for Resolution Re: Open Access and Retail Competition)*".

On April 28, 2011, PEMC filed its "*Compliance*" submitting its answers to MERALCO's "*Written Interrogatories*".

On May 2, 2011, MPPCL filed its "*Consolidated Comment*".

On May 13, 2011, the DOE filed its "*Manifestation*" submitting its answers to MERALCO's "*Written Interrogatories*".

Relative to the directive of the Commission during the April 6, 2011 hearing, on May 24, 2011, NGCP filed its "*Compliance*" submitting the following documents: 1) Judicial Affidavit of Ms. Palencia (Answers to the Written Interrogatories of MPPCL); 2) Judicial Affidavit of Ms. Palencia (Answers to the Written Interrogatories of MERALCO); 3) Judicial Affidavit of Mr. Michael L. Pascual (Answers to the Written Interrogatories of MERALCO); and 4) Judicial Affidavit of Mr. Giovanni R.A. Galang (Answers to the Written Interrogatories of MPPCL and MERALCO).

## DISCUSSION

In these proceedings, the Commission took judicial notice of the fulfillment of the conditions under Sections 31 (a), (b) and (c) of the EPIRA based on the resolutions and decisions it rendered on the various applications for the unbundling of transmission and distribution wheeling charges and removal of cross subsidy, and the applications for the requisite regulatory approvals for the establishment and operation of the WESM both in the Luzon and Visayas grids.

Hence, the Commission has deemed that what is left for resolution is the issue of whether or not the conditions under Section 31 (d) and (e) of the EPIRA have been satisfied as well as the adequacy of the necessary infrastructure and promulgation of the relevant rules and guidelines for the competitive retail electricity market.



**1. Fulfillment of the EPIRA Provisions on Privatization**

Inasmuch as PSALM is the government entity mandated to manage the orderly sale, disposition and privatization of NPC assets and IPP contracts<sup>2</sup>, the Commission gives full faith and credence to the determinations it made, as contained in all its submissions and based on the testimony of the witness it presented at the hearings.

While in its initial submission, PSALM proffered several baseline scenarios under which the determination of the seventy percent (70%) threshold can be made, the Commission takes exception to PSALM's submission as contained in its "Legal Memorandum" dated April 5, 2011 where it declared that "the conditions under Section 31 (d) and (e) of the EPIRA have been fulfilled."<sup>3</sup>

The baseline utilized by PSALM for purposes of determining compliance with Section 31 (d) and (e) is the list of power plants for privatization/disposal and their respective capacities as contained in the Joint Congressional Power Commission (JCPC) Resolution No. 2002-2 dated August 29, 2002. PSALM considered and subsequently adopted the said list of power plants, endorsed to the President of the Philippines, invoking the authority of the JCPC to determine the overall framework of the EPIRA. Further, in its determination, PSALM utilized the installed generating capacity established and defined by the Commission for purposes of monitoring compliance with the market share limitations set under the EPIRA. More importantly, as testified to and confirmed by PSALM's witness, the said manner of computation was approved by the PSALM Board of Directors.

In particular, PSALM submitted calculations that indicated a **79.56%** transfer of the generating assets, in compliance with Section 31 (d) and a

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<sup>2</sup>Section 50, Republic Act No. 9136

<sup>3</sup>PSALM Legal Memorandum dated 05 April 2011, p. 14



76.85% transfer of the IPP contracts to IPP Administrators, in further compliance with Section 31(e), both of the EPIRA, viz:

(i) Privatization of NPC Assets

No.	Plants	2010 Installed Generating Capacity	Status of Priva/Disposal
I.	Operational		
<b>Luzon Grid</b>			
1	Calaca	600.00	Privatized
2	Masinloc	635.00	Privatized
3	Ambuklao	-	Privatized
4	Angat	153.97	<i>Pending Turn Over</i>
5	Binga	100.00	Privatized
6	Pantabangan	112.00	Privatized
7	Masiway		Privatized
8	Magat	360.00	Privatized
9	Tiwi	169.16	Privatized
10	Mak-ban	281.25	Privatized
11	Bacman	36.32	Privatized
12	Sucat Thermal	-	<i>Decommissioned/ For Disposal</i>
13	Navotas I & II	-	<i>Forfeited by LGU/For Turn Over</i>
14	Malaya	650.00	<i>For Priva</i>
15	Limay	603.48	Privatized
<b>Sub-Total - Luzon:</b>		<b>701.18</b>	
<b>Visayas Grid</b>			
16	Loboc	1.20	Privatized
17	Amlan	0.40	Privatized
18	Palinpinon	192.50	Privatized
19	Tongonan	112.50	Privatized
20	Bohol	166.50	Privatized
21	Panay I		Privatized
23	Panay III(formerly Pinamucan)		Privatized
22	Diesel Barges	61.90	<i>For Priva</i>
<b>Sub-Total -Visayas:</b>		<b>535.00</b>	
Total Capacity in Luzon and Visayas		4,236.18	
Total Capacity Turned Over to SGCs/LGUs		3,370.31	
Priva Level (Bid Out)		83.19%	
Priva Level (Turned Over)		<b>79.56%</b>	

(ii) Privatization of IPP Contracts

Project ID	Plant Name	Installed MW	Status of Priva/ Disposal
<b><u>LUZON GRID</u></b>			
A2	HEDCOR/ NMHC (Benguet)	30.75	<i>Pending Turn Over</i>
A3	PAGBILAO COAL-FIRED PP	700.00	Turned Over to IPPA
A13	ENRON-SUBIC DIESEL PP	-	Turned Over to SBMA
A14	BAUANG DIESEL PP	224.91	Turned Over to LGU
A22	SUAL COAL-FIRED PP	1,000.00	Turned Over to IPPA
A25	CASECNAN MULTI-PURPOSE	150.00	<i>For IPPA Appointment</i>
A28	BAKUN HYDRO	70.00	Turned Over to IPPA
A30	SAN ROQUE MULTI-PURPOSE	345.00	Turned Over to IPPA
A31	ILIJAN NATURAL GAS PP	1,200.00	Turned Over to IPPA
A33	KALAYAAN I & II	737.27	<i>For IPPA Appointment</i>
	KALAYAAN III & IV		
	BOTOCAN	22.35	
	CALIRAYA	35.83	
	Makban Binary	-	Privatized as Genco
		<b>4,516.11</b>	
<b><u>VISAYAS GRID:</u></b>			
A20	CEBU THERMAL 1	106.30	<i>For IPPA Appointment</i>
	CEBU THERMAL 2		
	CEBU LAND BASE GT 1 & 2 (Naga Cebu)	54.00	Privatized as Genco
		<b>160.30</b>	
	Total Luz/Vis	4,676.41	
	Luz/Vis Turned Over to IPPA/LGU/SGC/OGA	3,593.91	
	<b>Priva Level Luz/Vis</b>	<b>76.85%</b>	

For the reason stated above, the Commission hereby adopts the aforesaid determination of the requisite privatization threshold levels for the declaration of Open Access and Retail Competition.

## 2. Adequacy of all Necessary Infrastructures

### a. Adequacy of generation supply

Generation adequacy or the sufficiency of generation supply to meet expected demand, is one of the fundamental components of retail competition. Adequacy refers to the ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers at all times as well as the system reserve requirements, taking into account scheduled and reasonably-expected unscheduled outages of all system elements. Maintaining the supply balance is essential to ensure that pricing in the wholesale and retail electricity markets is kept at competitive and reasonable levels. When there is scarcity of generation supply, the ability of the generators to exercise their market power dramatically increases and this ultimately results in excessive retail prices. Prior to and during the implementation of open access and retail competition, sufficient generation supply must be ensured for the protection of consumers.

At the hearings, the Commission elicited critical inputs from the DOE, being the policy making body of the industry and the entity mandated to ensure the reliability, quality and security of supply of electric power. On March 7, 2011, the DOE submitted the supply and demand outlook for the next five (5) years in Luzon and Visayas, including the basis for its projection, energy projects and programs ensuring energy supply security in the Luzon and Visayas Grids. Other data to prove generation adequacy in Luzon and Visayas were also submitted, in particular the Grid Operating and Maintenance Program (GOMP) for 2011.

The DOE's submission indicates an existing dependable capacity in Luzon for 2010 at 10,030 MW. This is expected to be reduced to 9,384 MW in 2011

based on the assumed scheduled retirement of the Malaya Thermal Power Plant with a dependable capacity of 645.83 MW. On the other hand, the peak demand forecast is at 7,582 MW and the required reserve margin for the year is 1,774 MW, which is 23.4% of the peak demand. With the said outlook, the DOE assumes an additional dependable capacity of 300 MW required for the Luzon Grid for 2011 inasmuch as the additional committed capacity is merely supplied by the BacMan Geothermal Power Plant. The outlook for 2012 demonstrates the same level of requirement.

The Luzon Supply-Demand Outlook is summarized in Figure 1 below:

Figure 1. Luzon Supply-Demand Outlook, 2010-2015						
	2010	2011	2012	2013	2014	2015
Required Additional Capacity		300	300		450	450
Committed		41		634		
Existing Capacity	10,030	9,384	9,384	9,384	9,384	9,384
Required Reserved Margin (23.4% of Peak Demand)	1,701	1,774	1,856	1,944	2,038	2,135
Peak Demand Forecast	7,270	7,582	7,934	8,309	8,710	9,123
Based on Official DOE 2009-2030 Power Development Plan						

On the other hand, the DOE presents a positive outlook in the Visayas Grid. The peak demand forecast for 2011 as submitted is equivalent to 1,448 MW with a required reserve margin of 339 MW while the existing dependable capacity is set at 1,457 MW.

The Visayas Supply-Demand Outlook is summarized in Figure 2 below:

Figure 2. Visayas Supply-Demand Outlook, 2010-2015						
	2010	2011	2012	2013	2014	2015
Required Additional Capacity						
Committed	240	398				
Existing Capacity	1,505	1,457	1,457	1,457	1,457	1,457
Required Reserved Margin (23.4% of Peak Demand)	335	339	348	361	375	390
Peak Demand Forecast	1,430	1,448	1,486	1,545	1,603	1,666
Based on Official DOE 2009-2030 Power Development Plan						

*Energy Projects and Programs Ensuring  
Energy Supply Security in the Luzon and  
Visayas Grids*

On the status of the private sector-initiated power projects in Luzon as of January 25, 2011, GNPowder has committed a 2 x 300 MW Coal-Fired Power Plant with a rated capacity of 600 MW and is targeted to be commissioned in January 2013. The rest of the projects for Luzon are only indicative as reported by the DOE.

For the Visayas region, most of the committed projects have already been completed. The Cebu Energy Development Corporation has commissioned a 3 x 82 MW Circulating Fluidized Bed (CFB) Power Plant Expansion Project with a rated capacity of 246 MW. KEPCO SPC Power Corporation has commissioned a Coal Fired Power Plant with a rated capacity of 206 MW. In addition, Panay Energy Development Corporation has commissioned a 2 x 82 CFB Power Plant with a rated capacity of 164 MW.

Meanwhile, Green Power Panay Philippines, Inc. has committed Green Power Panay with a rated capacity of 35 MW which is targeted to be commissioned in December 2012. The rest of the projects for Visayas are only indicative.

On the basis of the above submissions, it is apparent that the supply conditions as presented are sufficient to sustain the operations of the retail market, subject to the continued operations of the Malaya Thermal Power Plant with a 645.83 MW dependable capacity as well as the entry of the indicative power plants as stated in the said DOE submission.

Moreover, the Commission notes the additional capacity from renewable power plants that may be realized upon implementation of the Feed-in Tariff System and other incentive mechanisms for renewable power projects and activities, pursuant to Republic Act No. 9513 or the Renewable Energy Act of 2008.

*b. Network System Adequacy*

Transmission interconnections play an important role in contributing to adequacy. A well-planned and adequate power system leads to a secure system in day-to-day operations. The manner by which the power system can match the evolution in electricity demand is expressed as system adequacy. System adequacy measures the ability of a power system to cope with its load in all the steady states it may operate under standard conditions. System operators are responsible for maintaining system adequacy at a defined high level. They should ensure that the generation system is able to cover the peak demand, avoiding loss-of-load events, for a given security of supply.

An adequate transmission network is one that can support the capacity being supplied by generators and the demand being drawn by the customers. The existence of transmission network congestion, wherein the transmission facilities have reached their power transfer limit and can no longer transmit electricity in excess of their transmission capacity, poses a limitation in a competitive electricity market. When congestion occurs, it results in limited supply in a certain area, not due to inadequate generation, but due to inadequate transmission capacity. In a competitive electricity market, congestion in the transmission system causes electricity prices to increase because more

expensive supply, which does not pass through the congested lines, has to be sourced to meet the demand. As such, an adequate transmission system is essential for a competitive electricity market to flourish.

The Commission's determination of the date of implementation of the open access at the retail level considers the adequacy of transmission networks, given that contestable customers will be directly affected by changes in market prices should congestion occur. In line with this, the Commission has directed the NGCP to submit its list of projects to improve transmission capacity of the Luzon and Visayas Grids. Among these projects, the following are the milestones for 2010 and 2011:

Transmission Projects in Luzon<sup>4</sup>

Transmission Facilities Involved	Project Undertaken	Project Description
San Jose EHV Substation	San Jose Transformer Replacement Project (Completed in September 2010)	This project replaced the 500/230 kV transformer banks (from 4-600 MVA to new 4-750 MVA) at San Jose Substation.  With the increase in capacity at San Jose EHV substation, the provision for N-1 contingency is maintained.
Biñan-Sucac 230 kV Line	Biñan-Sucac 230 kV Line 4 Project  (Completed in June 2010)	This project involved the construction of the fourth Biñan-Sucac 230 kV transmission line (14 km) circuit and the installation of switching facilities at both Biñan and Sucac substations. The completion of the project maintains provision for N-1 during maximum dispatch of generating plants in South Luzon by increasing the transfer capacity of the Biñan-Sucac transmission corridor.

<sup>4</sup> Exhibit "B"

Transmission Projects in Visayas<sup>5</sup>

Transmission Facilities Involved	Project Undertaken	Project Description
Leyte-Cebu Submarine Cable	PCB Installation Project for the Reactor at Talisay Substation (Completed in July 2010)	<p>This project involved the installation of a power circuit breaker (PCB) for the 50 MVAR reactor of the Talisay-Tabango submarine cable 1 at Talisay Substation. Before the installation of the PCB, the Leyte-Cebu submarine cable is limited only to a power flow of 360 MW.</p> <p>With the PCB, the reactor can now be switched off to allow 400 MW of power flow along the Leyte-Cebu submarine cable.</p>
Compostela Substation	Compostela Substation Expansion Project (Under Visayas Substation Reliability I)	<p>The project involves the installation of a fourth 150 MVA 230/138 kV transformer at Compostela Substation.</p> <p>The project aims to accommodate more power from Leyte and Luzon to be transferred to the Cebu, Negros and Panay subgrids during outage or maintenance of either one of the transformers at Compostela Substation.</p>
Talavera-Sigpit-Naga (Phase 1)	Talavera-Sigpit-New Naga 138 kV Reinforcement Project	<p>Phase 1 of the project involves the construction of a single-circuit tie-line between VECO's Colon Substation and NGCP's New Naga Substation utilizing 2-795MCM ACSR conductor similar to the CEDC-VECO Colon line. This will result to the termination of the CEDC-Colon line to New Naga Substation which will serve as reinforcement to the CEDC-Talavera-Sigpit-New Naga line. With this tie-line, the 246 MW capacity of the CEDC power plant can be fully transmitted to the grid during normal condition.</p>
Negros-Panay Submarine Cable (Phase 1)	Negros Panay Interconnection Uprating Project	<p>Phase 1 of the project involves the construction of the second circuit 138 kV line from Dingle to San Juan.</p> <p>The project will accommodate the supply of power to Panay coming from power plants in other islands, such as the geothermal</p>

<sup>5</sup> Exhibit "C"



Transmission Facilities Involved	Project Undertaken	Project Description
		<p>power plants in Negros and Leyte.</p> <p>It will also enable power plants in Panay, such as the 2x82 MW PEDC, to export power to other islands.</p>

The projects listed above are intended to improve the performance of the transmission system and minimize the possible occurrences of congestions in Luzon. According to the NGCP, the projects in Visayas to be completed in 2011 will enable the transport of power from Luzon and Leyte and provide adequate supply of power to the Cebu, Negros and Panay sub-grids, which have been experiencing power shortages due to transmission constraints and increasing demand. In addition, NGCP has lined up transmission projects for 2013-2014 and other indicative projects that will further strengthen the transmission grid throughout the Luzon and Visayas regions.

Given all these, the Commission is convinced that the transmission network, having already been declared to be sufficient to support the wholesale market, will in turn be adequate for the efficient implementation of a competitive retail electricity market.

*c. The Customer Switching System*

One important component of the retail market is the customer switching system supported by a Business-to-Business (B2B) System that will be maintained and operated ideally by an entity managing the central registry for the retail market. The B2B System is intended to be an information technology supported-hub for all the retail market participants for the purpose of information

exchange for switching, billing and settlement purposes. The Commission is cognizant that the ability to exchange information among retail market participants with ease is essential for competition to thrive.

The successful implementation of retail competition is largely dependent on the infrastructure that will support the processes and transactions therein. Notwithstanding that the setting up and maintenance of this type of infrastructure will require substantial capital costs, where even the sourcing for the initial funding has been a challenge for the Commission to secure, it is determined to oversee the entire switching process and all the infrastructures in the retail market, following the procedures for customer transfers to another supplier of electricity in the *Rules on Customer Switching*. The Commission shall accordingly develop the appropriate B2B System and formulate the corresponding protocols, consistent with its mandate to formulate the enabling infrastructures within the market and ensure that these are fully functional to effect a high level of competitiveness.

The need to establish an efficient and intelligent B2B system related to customer switching cannot be overemphasized inasmuch as the inability to transfer a customer's account from one supplier to another with ease can be a stumbling block for competition. However, as above-mentioned, the Commission is handicapped in terms of sourcing the necessary funding for a project of such magnitude. Hence, considering the full realization of the pre-conditions for open access and retail competition under Section 31 of the EPIRA and the fulfillment of the vital requirements prescribed by the Commission, as earlier discussed, and owing to the commercial and proprietary nature of the data within the retail market, a simplified information repository for the switching process shall initially be established by and within the Commission as transitory step. Additional

protocols, as may be necessary, shall be formulated for the exchange of information during this transition phase.

**3. Completion of the Framework for the Competitive Retail Electricity Market**

While the discussion at the outset demonstrates that the Commission has already put in place the basic foundation for the retail market, there are several other actions and activities that have to be undertaken prior to Open Access Date. These serve as the final finishing touches to ensure successful implementation of retail competition.

*a. Determination/Confirmation of Participants in the Market*

After issuing licenses to several RES, the Commission is still to confirm the participation of the rest of the new market participants, namely, the Local RES, the SOLR and all the contestable customers. The retail market rules prescribe the manner by which these entities shall be notified and their participation confirmed. In the case of the contestable customers, the Commission shall determine the contestable customers based on the DUs' submissions of their lists of customers with an average peak demand of at least one megawatt (1 MW) and thereafter, shall issue certifications to the qualified contestable customers to ensure that they are duly informed. In connection with this, the Commission shall issue the appropriate directive requiring the DUs to distribute to their respective customers the certifications to be issued for the contestable customers.

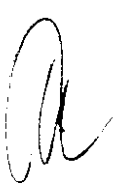


The Commission anticipates that two (2) months will be needed to complete this confirmation to make certain the receipt of information by the appropriate entities, not least of which are the contestable customers whose certification as such should trigger the search and negotiation processes for the entire retail industry.

On the other hand, a Local RES is the competitive retail business segment of a DU which will supply contestable customers within its franchise area. It is the choice of the DU to establish a Local RES business. As it is not a default supplier, the DU must inform the Commission of its intent to become a Local RES through a formal notice.

*b. Launch of an Intensive Information Campaign*

Consistent with its mission of protecting the long-term interests of the consumers, the Commission has commenced its intensive information campaign for qualified contestable customers in May 2011 through an information caravan. This is an on-going activity and shall be intensified in the coming months. For this purpose, the Commission shall launch an institutional in-house training program for the contestable customers, which shall be held on a regular basis until one year after the declaration of open access. Thereafter, a second round of education campaign for the qualified contestable customers shall be conducted. This shall be on top of information assistance that the Commission shall extend to the DUs and the RES.



c. *SOLR Rate Filing*

In the initial phase of retail competition, the DU of a franchise area shall serve as the SOLR to provide emergency supply services to contestable customers located in that area which would find themselves without an RES for reasons specified in the *Rules on the Supplier of Last Resort*. The rates to be imposed by the SOLR shall not be competitive and shall be subject to the approval of the Commission since this is a regulated business activity of the DU. Thus, the SOLR rate shall be approved in accordance with the adjudicatory processes of the Commission. Said approval is estimated to take about four (4) months from the filing of the concerned entities under the *Rules on Rate Filing by the SOLR*.

With due consideration to the time needed for these remaining actions and activities to be undertaken as part of the preparations, the Commission finds that Open Access and Retail Competition in Luzon and Visayas may already commence after about six (6) months, specifically, on **December 26, 2011**.

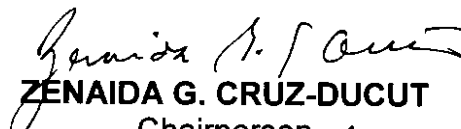
**DISPOSITION**

**WHEREFORE**, the foregoing premises considered and consistent with Section 3, Rule 12 of the Implementing Rules and Regulations of the EPIRA, the fulfillment of the conditions under Section 31 of the EPIRA as well as the vital conditions prescribed by it, the Commission hereby declares **December 26, 2011** as the Open Access Date to mark the commencement of the full operations of the competitive retail electricity market in Luzon and Visayas.

All electricity end-users with an average monthly peak demand of one (1) MW for the twelve (12) months preceding December 26, 2011, as certified by the Commission to be contestable customers, shall have the right to choose their own electricity suppliers and are, thus, enjoined to exercise such right to their full benefit.

**SO ORDERED.**

Pasig City, June 6, 2011.

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

(On Leave)  
**ALEJANDRO Z. BARIN**  
Commissioner

  
**MARIA TERESA A.R. CASTAÑEDA**  
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Commissioner

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