

[ERC RESOLUTION NO. 16, S. 2012, December 17, 2012]

A RESOLUTION ADOPTING THE TRANSITORY RULES FOR THE IMPLEMENTATION OF OPEN ACCESS AND RETAIL COMPETITION

WHEREAS, pursuant to Section 43 of Republic Act 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) and its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) is mandated to promulgate rules and regulations and perform regulatory functions appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry;

WHEREAS, it is necessary to provide additional regulatory framework in the commercial operation of retail competition including the initial transactions to ensure the effective implementation of the competitive retail electricity market;

WHEREAS, on September 27, 2012, the ERC approved the proposed amendment of the 3rd Draft Transitory Rules and posted it in its administered websites to solicit comments from the industry participants;

WHEREAS, on October 24, 2012, a public consultation was conducted by the ERC to discuss the comments submitted by the concerned stakeholders;

WHEREAS, from November 13, 2012 to November 19, 2012, the revised draft was posted to seek the final comments from the industry participants;

WHEREAS, in accordance with the provisions of the EPIRA and after a careful consideration of the various views and comments submitted by interested parties, the ERC deems it appropriate to adopt the Transitory Rules for the Initial Implementation of Open Access and Retail Competition;

NOW THEREFORE, the ERC, after a thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT**, the "**Transitory Rules for the Initial Implementation of Open Access and Retail Competition**" hereto attached as ANNEX "A" and made an integral part of this Resolution.

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all entities engaged in the generation, transmission, distribution and supply of electricity, and the Central Registration Body.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation.

(SGD.) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD.) MARIA TERESA A.R.
CASTAÑEDA
Commissioner

(SGD.) JOSE C. REYES
Commissioner

(SGD.) ALFREDO J. NON
Commissioner

(SGD.) GLORIA VICTORIA C.
YAP-TARUC
Commissioner

Annex "A"

TRANSITORY RULES FOR THE INITIAL IMPLEMENTATION OF OPEN ACCESS AND RETAIL COMPETITION

Pursuant to Sections 29, 31 and 43 of Republic Act No. 9136, hereinafter referred to as "the Act", and its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby adopts and promulgates the Transitory Rules for the Initial Implementation of Open Access and Retail Competition.

Section 1. Objectives. To ensure the smooth transition from the existing structure to a competitive environment and to promote the interests of all stakeholders in the electricity industry, the ERC adopts these Transitory Rules for the competitive market that is established upon Open Access at the distribution level.

Section 2. Scope. These Rules shall apply to:

- a. Central Registration Body (CRB)
- b. Contestable Customers;
- c. Retail Electricity Suppliers (RES);
- d. Local Retail Electricity Suppliers (Local RES);
- e. Distribution Utilities (DUs); For purposes of these Rules, DUs include entities authorized to supply electricity within their respective economic zones;
- f. Supplier of Last Resort (SOLR);
- g. National Grid Corporation of the Philippines (NGCP);
- h. Metering Service Providers (MSP); and
- i. All other relevant industry participants.

Section 3. Definition of Terms

Act – Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001".

Business Day – A day other than a Saturday, a Sunday or an official or declared Philippine national or local public holiday.

Business to Business (B2B) System – An information technology (IT) infrastructure that handles information exchange among competitive retail market participants with the end in view of fulfilling an efficient Switching by Contestable Customers and accounting of all retail transactions in the competitive retail market.

Cooling-Off Period – The period of five (5) Business Days, or a longer period agreed upon by both parties, commencing from the signing of the Retail Supply

Contract (RSC) within which Contestable Customer has the right to cancel the RSC it has entered into with the RES or Local RES.

Captive Market – 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.

Central Registration Body (CRB) – An independent entity assigned to undertake the development and management of the required systems and processes and information technology system that shall be capable of handling customer switching and information exchange among retail electricity market participants, as well as the settlement of their transactions in the WESM. Pursuant to the Department of Energy (DOE) Department Circular No. DC 2012- 02-0002 dated February 24, 2012 and ERC Resolution No. 15, Series of 2006, the CRB functions shall be performed by the Philippine Electricity Market Corporation (PEMC).

Contestable Customer (CC) – An electricity End-user who has a choice of a supplier of electricity as determined by the ERC in accordance with the Act and the Rules for Contestability.

Directly-Connected Customers (DCCs) – Refers to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or National Power Corporation (NPC) pursuant to Republic Act No. 6395, as amended by Presidential Decree No. 395. For purposes of these Transitory Rules, any reference to a DCC shall be taken to mean a reference to a DCC which is a Contestable Customer.

Distribution Services and Open Access Rules (DSOAR) – The rules promulgated by ERC regarding the provision of regulated services by a DU to entities such as captive and contestable customers, RES or Local RES, other DUs, generation companies, under the environment created by the Act.

Distribution Utility (DU) – 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 the Act.

End-user – Any person or entity requiring the supply and delivery of electricity for its own use.

Energy Regulatory Commission (ERC) – The independent and quasi-judicial regulatory agency created under Section 38 of the Act.

Initial SOLR Rate – The WESM Ex-Ante Nodal Energy Price for the given interval, as adjusted in accordance with WESM Rules or the bilateral contract price between the DU and a generation company, whichever is higher, plus a premium as specified in Sections 9.1 to 9.2.

Initial Switch/Switching – The commercial transfer of a Contestable Customer from DU as Captive Customer to RES/Local RES, which takes effect on June 26, 2013, or the subsequent billing period immediately following June 26, 2013, or not later than December 26, 2013.

Local Retail Electricity Supplier (Local RES) – The non-regulated business segment of the DU authorized by the ERC to supply electricity to the Contestable Customers within the DU's franchise area only, or Persons authorized by appropriate

entities to supply electricity within their respective economic zones. As Local RES, the DU is not required to secure a supplier's license.

National Grid Corporation of the Philippines (NGCP) – The corporation that has been granted the concession to operate the assets of TransCo.

National Transmission Corporation (TransCo) – The corporation organized pursuant to the Act to acquire all the transmission assets of the National Power Corporation (NPC).

Open Access – 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.

Open Access Date – The commencement date of open access and retail competition in a grid as determined by the ERC to be on 26 December 2012.

Retail Electricity Supplier (RES) – Any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to Contestable Customers.

Retail Supply Contract (RSC) – The contract for the sale of electricity entered into by and between the RES/Local RES and the Contestable Customer.

Rules for Contestability – The rules promulgated by the ERC that prescribe the conditions and criteria for an end-user to qualify as a Contestable Customer.

Rules for the Supplier of Last Resort – The rules promulgated by the ERC that govern the provision of supply to Contestable Customers in case of a last resort supply event.

Supplier of Last Resort (SOLR) – A regulated entity designated by the ERC with the obligation of serving Contestable Customers pursuant to the Rules for the SOLR and other set of rules issued by the ERC.

Transition Period – The period covering the first six-months from Open Access Date of December 26, 2012 up to June 25, 2013.

Wholesale Electricity Spot Market (WESM) – The Wholesale Electricity Spot Market established pursuant to Section 30 of the Act.

Section 4. General Provisions

4.1 During the Transition Period which will be from December 26, 2012 to June 25, 2013, the DUs shall continue to supply electricity to the Contestable Customers operating in their respective franchise areas. The rates to be charged by the DUs to the Contestable Customers during these six months shall be equivalent to the rates charged to their captive customers.

From June 26, 2013 to December 25, 2013, Contestable Customers who are not able to contract with a RES shall continue to be served by the DU. However, such CCs shall show that they have exhausted all means in securing an RSC with a RES to the ERC.

4.2 All government entities qualified as Contestable Customers in Luzon and Visayas may continue to be supplied by the DUs or their current suppliers until such time