

[ERC RESOLUTION NO. 18, S. 2010, July 19, 2010]

**A RESOLUTION ADOPTING THE RULES TO GOVERN THE
SUBMISSION, EVALUATION AND APPROVAL OF LEASE OF
PROPERTY BY DISTRIBUTION UTILITIES**

WHEREAS, Section 20 (g) of Commonwealth Act No. 146, as amended, (C.A. 146) provides that subject to established limitations and exceptions and saving provision to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission to sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof;

WHEREAS, Section 26 of Republic Act No. 9136 (R.A. 9136), otherwise known as the "Electric Power Industry Reform Act of 2001 " (EPIRA) and Section 5 (c), Rule 7 of its Implementing Rules and Regulations (IRR) authorize distribution utilities (DUs) to engage, directly or indirectly, 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 Commission: Provided, further, That such portion of the 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;

WHEREAS, Rule 21 of the Commission's Rules of Practice and Procedure allows any interested person to file a petition to initiate rule-making before the Commission for the adoption, amendment or repeal of a Rule;

WHEREAS, on July 30, 2009, the Manila Electric Company (MERALCO) and Private Electric Power Operators Association, Inc. (PEPOA) filed a Petition for the issuance of Guidelines to Govern the Submission, Evaluation and Approval of Lease of Property by DUs, which was docketed as ERC Case No. 2009-009 RM;

WHEREAS, on August 13 to 26, 2009, the Commission posted on its website the draft "*Rules to Govern the Submission, Evaluation and Approval of Lease of Property by DUs (proposed Rules)*" for comments from industry stakeholders. However, no comment was received from any stakeholder;

WHEREAS, the Commission issued an Order dated August 13, 2009 setting the said petition for public hearing on September 14, 2009 at the Commission's Main Office. At the said hearing, MERALCO and PEPOA presented to the Commission their proposed Rules for approval;

WHEREAS, the following objectives necessitate the promulgation of the proposed Rules:

1. To provide the DUs with a uniform system of filing application for approval of lease of its properties;
2. To enable the DUs to maximize the utilization of their assets by allowing them to lease their available spaces/properties;
3. To protect public interest as it is affected by rates and services of DUs and other providers of electric power;
4. To ensure the economic, orderly and efficient development of DUs' resources that concern public interest; and
5. To ensure that the lease of equipment, materials and properties of DUs are transparent and compliant with applicable laws and accepted industry practices and standards.

NOW THEREFORE, the Commission, after thorough and due deliberation, **RESOLVED**, as it hereby **RESOLVES** to **ADOPT** the **"Rules to Govern the Submission, Evaluation and Approval of Lease of Property by Distribution Utilities"**, copy of which is hereto attached as **"Annex A"**.

This Resolution shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all Distribution Utilities.

(SGD.) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD.) RAUF A. TAN
Commissioner

(SGD.) ALEJANDRO Z. BARIN
Commissioner

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

(SGD.) JOSE C. REYES
Commissioner

Annex "A"

Guidelines to Govern the Submission, Evaluation and Approval of Lease of Property by Distribution Utilities

Pursuant to Sections 26 and 43 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)", Rules 3 and 7 of its Implementing Rules and Regulations (IRR), and Section 20 (g) of Commonwealth Act No. 146 (CA 146), as amended, the Energy Regulatory Commission (ERC) hereby promulgates and adopts the following guidelines to govern the submission, evaluation and approval of lease of property by a distribution utility (DU).

ARTICLE I GENERAL PROVISIONS

1.1 Objectives

- 1.1.1 To provide the DUs with a uniform system of filing application for approval of leases of its properties.
- 1.1.2 To enable the DUs to maximize the utilization of their assets by allowing them to lease available spaces/properties.
- 1.1.3 To protect public interest as it is affected by rates and services of DUs and other providers of electric power.
- 1.1.4 To ensure the economic, orderly and efficient development of DUs' resources that concern public interest.
- 1.1.5 To ensure that the lease of equipment, materials and properties of DUs are transparent and compliant with applicable laws and accepted industry practices and standards.

1.2 Guiding Principles

Section 26 of the EPIRA and Rule 7, Section 5(c) of its IRR provide that a DU may, directly or indirectly, engage in any related business undertaking which maximizes the utilization of its assets: Provided that, a portion of the net income derived from such undertaking which utilizes assets that are part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC, and that quality of service shall not deteriorate pursuant to the standards provided in the Distribution Code and Rule 10 of the IRR of the EPIRA on Structural and Functional Unbundling of Electric Power Industry Participants.

To this end, the DU shall submit to the ERC the appropriate documents to effect the following: (i) A portion of the net annual income derived from such undertaking which utilizes assets that are 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. The Business Separation Guidelines (BSG) provides the framework and rules for the implementation of the requirements of these sections of the EPIRA and its IRR.

Furthermore, Section 20 (g) of CA 146 provides that it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had to, among other things, sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with those of any other public service.

1.3 Scope of Application

These Guidelines apply to the following:

- 1.3.1 Electric Cooperatives;
- 1.3.2 Privately-Owned Distribution Utilities;
- 1.3.3 Local Government Unit (LGU) Owned-and-Operated Distribution