

[**ERC, July 12, 2004**]

RULES GOVERNING THE COLLECTION OF THE UNIVERSAL CHARGE

WHEREAS, Section 34 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (the "Act" or "EPIRA"), provides for a Universal Charge which shall be imposed on all End-Users for the following purposes:

1. Payment for the Stranded Debts in excess of the amount assumed by the National Government and Stranded Contract Costs of National Power Corporation ("NPC");
2. Payment for the qualified Stranded Contract Costs of Distribution Utilities;
3. Missionary Electrification;
4. The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
5. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (PhP0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements; and
6. A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

WHEREAS, Section 5 of Rule 18 of the Implementing Rules and Regulations of the Act ("IRR") mandates that the Universal Charge shall be a non-bypassable charge which shall be (1) collected from all End-Users on a monthly basis by Distribution Utilities or Suppliers in case of a Contestable Market; or (2) remitted directly to the National Transmission Corporation ("TRANSCO") or its Concessionaire by any End-Users or Self Generation Entities not connected to a Distribution Utility;

WHEREAS, Section 7 of Rule 18 of the IRR provides that 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;

WHEREAS, there is a need to establish the Rules for the collection of the Universal Charge and to prescribe the responsibilities of the entities in the collection of the Universal Charge;

WHEREAS, Section 34 of the Act mandates the ERC to determine, fix and approve the Universal Charge to be imposed on all End-Users;

NOW, THEREFORE, be it RESOLVED as the ERC HEREBY RESOLVES, to adopt the following Rules to Govern the Collection of the Universal Charge:

SECTION 1. Definition of Terms-

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

"*Act*" refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001";

"*Beneficiaries*" refer to entities eligible or authorized by the ERC to avail of the Universal Charge pursuant to EPIRA and its IRR;

"*Buyer or Concessionaire*" refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets; any reference made to TRANSCO shall apply to the Concessionaire upon its assumption of TRANSCO's responsibilities;

"*Collecting Entities*" refer to the entities, namely: (1) TRANSCO or its Buyer or Concessionaire; and (2) Distribution Utilities or Suppliers, in case of Contestable Markets, who are authorized to collect from End-users on a monthly basis the Universal Charge as prescribed by the ERC;

"*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;

"*Department of Finance*" or "*DOF*" refers to the government agency created pursuant to Executive Order No. 127, as amended;

"*Distribution Utility*" refers to any electric cooperative, private corporation, government owned and/or controlled utility or existing local government unit which has an exclusive franchise to operate a Distribution System in accordance with its franchise and the Act;

"*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);

"*Electric Cooperative*" or "*EC*" refers to a Distribution Utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided for in the Act;

"*End-user*" refers to any Person or entity requiring the supply and delivery of electricity for its own use;

"*Energy Regulatory Commission*" or "*ERC*" refers to the independent, quasi-judicial

regulatory agency created by Section 38 of the Act;

"*Guidelines*" refers to the "Guidelines and Procedures Governing the Remittances and Disbursements of the Universal Charge" promulgated by PSALM in consultation with the DOF and approved by the ERC;

"*Main Trust Account*" refers to bank account established by PSALM purposely and exclusively for receiving the remittance of the Universal Charge collection from the Collecting Entities.

"*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 "Independent Market Operator" or "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;

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

"*National Power Corporation*" or "*NPC*" refers to the government corporation created under Republic Act No. 6395, as amended;

"*National Transmission Corporation*" or "*TRANSCO*" refers to the corporation organized pursuant to the Act to acquire all the transmission assets of NPC;

"*Person*" refers to a natural or juridical person, as the case may be;

"*Power Sector Assets and Liabilities Management Corporation*" or "*PSALM*" refers to the corporation created pursuant to Section 49 of the Act;

"*Self-Generation Entity*" shall have the same meaning as Self-Generation Facility.

"*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;

"*Small Power Utilities Group*" or "*SPUG*" refers to the functional unit of NPC created to pursue Missionary Electrification functions;

"*Special Trust Fund*" or "*STF*" refers to a trust fund established by PSALM for each intended purpose of the Universal Charge and its corresponding Beneficiary or Beneficiaries;

"*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;

"*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;

"*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 sale 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;

"*Supplier*" refers to any Person licensed by the ERC to sell, broker, market or aggregate electricity to End-users;

"*Universal Charge*" refers to the charge, if any, imposed for the recovery of the Stranded Debts of NPC, Stranded Contract Costs of NPC, Stranded Contract Costs of Eligible Contracts of Distribution Utilities and for other purposes authorized in Section 34 of the Act;

SECTION 2. Collecting Entities

The Universal Charge shall be collected by the following entities:

- (a) Distribution Utilities
- (b) Suppliers in case of Contestable Markets;
- (c) TRANSCO or its Concessionaire, as the case may be, from End-Users and Self-Generation Entities not connected to a Distribution Utility, nor being served by a Supplier.

2.01 End-Users of Electricity

The Universal Charge shall be imposed on Electricity End-Users such as but not limited to:

- (a) All End-Users purchasing electricity from Distribution Utilities such as residential, commercial, and industrial consumers, including government and/or public buildings, irrigation systems, and special lighting systems, other than End-Users who purchase their electricity from a Supplier in case of Contestable Markets;
- (b) All End-Users who are not connected to a distribution system, such as but not limited to government agencies and institutions, and industrial enterprises;
- (c) Locators, developers, operators and facilities operating in Economic Zones, provided they are not performing the distribution function;
- (d) Persons using Self- Generation facilities;