



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;


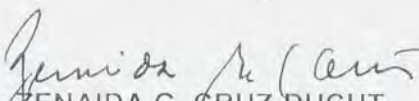

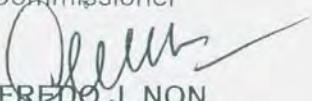
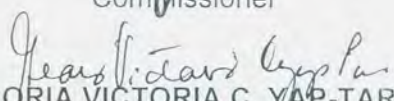
WHEREAS, in accordance with the provisions of the EPIRA and after a careful consideration of the various views and comments submitted by interested parties, the ERC deems it appropriate to adopt the Transitory Rules for the Initial Implementation of Open Access and Retail Competition;

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.

Pasig City, December 17, 2012.

 MARIA TERESA A.R. CASTAÑEDA Commissioner	 ZENAIDA G. CRUZ-DUCUT Chairperson	 JOSE C. REYES Commissioner
 ALFREDO J. NON Commissioner		 GLORIA VICTORIA C. YAP-TARUC Commissioner

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

**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 that the Government Policy Procurement Board shall have issued the necessary guidelines for their procurement of supply of electricity.
- 4.3 All Directly-Connected Customers that are qualified as Contestable Customers shall continue to be supplied by their electricity suppliers during the Transition Period or they shall be in status quo, as provided under DOE Department Circular No. DC2012-05-005.
- 4.4 During the Transition Period, the CRB, together with industry stakeholders, shall develop and finalize the Market Manuals, Business Process and IT design of the B2B and institute the initial preparation and population of its registration database using the latest available information.
- 4.5 The DUs designated by the ERC as SOLRs shall provide the last resort supply service for the Contestable Customers upon occurrence of a last resort supply event, pursuant to the Rules for the SOLR.
- 4.6 For DCCs qualified as Contestable Customers but are indirect members of the WESM, their SOLR shall be the franchised DUs designated as SOLR where the DCC is located. DCCs that are direct WESM members may opt to transfer to the SOLR or secure their power requirement from the WESM in accordance with the WESM Rules upon occurrence of a last resort supply event.
- 4.7 The ERC shall issue the Certificate of Contestability to qualified Contestable Customers in the economic zones. All Distributors or DUs within the economic zone in Luzon and Visayas shall submit to the ERC and CRB information on end-users with monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months as provided in Section 1, Article II of the Rules on Customer Switching, within fifteen (15) days from the effectivity of these Rules.

Distributors or DUs in the economic zones shall submit an update of the said data to the ERC and CRB every fifteenth (15th) day of the subsequent months without need of further notice. Failure of any Distributor or DU to comply with the said requirements or submit accurate information shall be subject to the appropriate ERC fines and penalties.

- 4.8 The RES/Local RES/Suppliers shall submit to the CRB for posting in its website, contracting parameters, to include its general offer terms and

conditions such as indicative average contract price offers and scope of services offered.

- 4.9 As a Direct Member of the WESM, the DU may seek approval from the ERC on the recovery of the prudential requirement under the WESM Rules.
- 4.10 Pursuant to the Rules for the Supplier of Last Resort (SOLR), the ERC shall designate and notify the SOLRs for all the DU franchise areas with Contestable Customers and furnish the CRB with the list of the SOLRs, on or before April 25, 2013.
- 4.11 For avoidance of doubt, protocols and processes contained in the various rules earlier issued by the ERC governing open access and retail competition shall apply even during the transitory period insofar as they are not inconsistent with these Transitory Rules.

Section 5. DUs' Service during the six-month Transition Period

- 5.1. The DU shall source its power supply for the Contestable Customers from existing power supply contracts it has already entered into prior to the Open Access Date. In case of insufficiency or expiration of said contracts upon Open Access Date, the said DU shall negotiate for additional contract volume or for an extension thereof at rates equivalent to or lower than the relevant ERC-approved recoverable generation costs, to cover its requirement for the Contestable Customers during these six months.
- 5.2 In the event the rate for the additional contract volume from the DU's existing approved power supply contract is lower or equal to the existing ERC-approved rates for such supply contract, the said additional contract volume shall be deemed approved by the ERC. On the other hand, if the rate is higher than the existing ERC-approved rates, the DU shall seek the approval of the ERC. The ERC, in turn, shall render its resolution within thirty (30) days from filing of the said application.

Section 6. Execution of RSC by the Contestable Customer

- 6.1. Contestable Customers that have not yet entered into an RSC by March 25, 2013 may seek assistance from the ERC. The ERC shall provide advice regarding contracting with an RES.
- 6.2. Contestable Customers shall enter into an RSC with an RES or Local RES on or before May 20, 2013 and the RES/Local RES shall inform the CRB of such fact within five days from expiry of the Cooling-Off Period or within the period May 27 to 31, 2013.

The RES/Local RES shall complete the basic conditions for Switching as provided in Section 1, Article III of the Rules on Customer Switching.

The RES/Local RES shall submit a valid Switch Request to the CRB between the period of June 3 to June 14, 2013 for the Initial Switch to take effect by June 26, 2013, or the subsequent billing period of the Contestable Customer immediately following June 26, 2013.

If the Contestable Customer fails to procure supply from a RES/Local RES or will not opt to source its power requirement from the WESM, or does not signify intention to remain with the DU, it shall be disconnected by the DU on June 26, 2013 or the subsequent billing period immediately following June 26, 2013, and such date shall be the effective date of the disconnection or transfer to the SOLR if the Contestable Customer opts to avail SOLR service.

The procedures for the assumption of SOLR service, as provided in Article IV of the Rules for the SOLR shall be followed.

- 6.3. For failure to inform the CRB or submit a valid Switch Request as provided in Section 6.2 above, the said Contestable Customer's RSC shall be effective on the subsequent billing period immediately following June 26, 2013.

This provision shall not apply to Contestable Customers who will opt to source their power requirement from the WESM, or opt to remain with the DU until December 25, 2013.

- 6.4. Should a last resort supply event occur to a Contestable Customer with an RSC during the period from June 26 to December 25, 2013, such Contestable Customer shall obtain the service of the designated SOLR, or source its supply of electricity from the WESM. Otherwise, the Contestable Customer shall be disconnected by the DU. If the Contestable Customer opts to obtain SOLR service, it will be served at the applicable SOLR Rates as provided in these Rules, subject to its acceptance of the terms and conditions of the SOLR contract.

Section 7. Initial SOLR Rates

- 7.1. The initial SOLR Rate shall be the applicable WESM Ex-Ante Nodal Energy Price or the price of the bilateral contract entered into for the purposes of providing SOLR service, whichever is higher, plus a 10% Premium to cover incremental administrative and overhead expenses and return on investment.
- 7.2. The above rate shall be the initial SOLR Rate, which shall be effective starting June 26, 2013 until such time that the DU files and submits its proposed SOLR Rate for approval by the ERC.



Section 8. System Loss Charges

- 8.1 The DU is responsible for procuring all energy related to distribution system losses and shall be allowed to recover such costs through ERC approved system loss charges, subject to a system loss cap. An RES/Local RES/SOLR shall pay any applicable distribution system loss charge to the DU for the procurement of energy related to distribution system losses.
- 8.2. System loss charges for the Contestable Customers shall be computed using the same methodology as provided in ERC Resolution 16, Series of 2009, for calculating the system loss charge for the DU's Captive Market.
- 8.3. The DU shall reflect in its billing to the RES/Local RES/SOLR the applicable system loss charge for billing to the latter's customers.

Section 9. Contracting for Transmission Wheeling Service

- 9.1 The DU shall remain the customer of the NGCP. Thus, the DU shall be responsible for procuring and charging for transmission services on behalf of the Contestable Customers that are connected to the distribution network.
- 9.2 Similarly, a DCC that is qualified as a Contestable Customer and is connected directly to the transmission system shall remain the customer of NGCP. Thus, said DCC shall receive a separate billing from NGCP for transmission service.

Section 10. Reduction of the DUs' Contracted Energy Volumes Upon Open Access Date

- 10.1. The existing power supply contracts between the DUs and the generation companies, which do not contain provisions on the reduction of contracted energy volume upon the migration of the Contestable Customers, shall be renegotiated by the DUs to address the excess contracted volumes of the DUs for their Captive Market. Any amendment to the said power supply contracts shall be filed with the ERC for its approval.
- 10.2. The DU may also sell any excess contracted energy volumes to an RES or assign it to its Local RES business segment, provided that such sale or assignment shall not discriminate against the DU's captive customers nor result to higher generation charges to them.
- 10.3. The DU may sell its excess contracted supply to the WESM, provided that it shall assume the price risk in cases where the spot prices shall be lower than its approved power supply contract rates. In the event the spot price is higher than the approved power supply contract rates, the DU shall be allowed to keep fifty percent (50%) of the net gains



from excess contracted supply traded at the WESM. Net gains shall refer to income from the sale of excess contracted energy supply to the WESM after off-setting any incremental generation costs for the captive customers for the trading period.

- 10.4 In the case of DUs with multiple bilateral contracts having no energy reduction provision, the DUs shall be allowed to propose their own methodology and demonstrate to the ERC that such complies with the least-cost supply obligation to the captive customers, given the migration of Contestable Customers to another RES, at least sixty (60) days from the effectivity of these Rules.
- 10.5 The DU may explore other means to reduce the excess contracted energy volumes provided the said amendments to DU's power supply contracts shall be filed with the ERC for its approval.

Section 11. Collection of Over/Under Recoveries of Pass-through Charges from Contestable Customers

- 11.1. Any over/under recovery in the regulated generation charges, transmission charges, system loss charges, lifeline rate subsidy, local franchise tax, business tax and senior citizen discounts, shall be applied for by DUs in the confirmation of the said regulated charges in accordance with ERC Resolution No. 16, Series of 2009.
- 11.2. The ERC shall confirm the said charges from the last billing period of the contestable customer when it was still the DU's captive customer until its transfer to a RES.
- 11.3. Any over/under recovery shall be refunded and/or collected from all contestable customers for billing periods when they were still captive. The DU shall be allowed to collect costs and other charges incurred by such DU prior to commercial transaction on June 26, 2013. These shall be part of DU's bill, as a separate line, through the RES/Local RES/SOLR currently serving the Contestable Customer.

All pass-through charges will continue to be billed to the Contestable Customer through the RES/Local RES/SOLR. These include transmission charges, system loss charges, lifeline rate subsidy, local franchise tax, business tax, senior citizen discounts, over/under recoveries on pass-through charges, universal charge and other ERC-approved charges.

- 11.4 During retail competition, the universal charge shall be continued to be billed and collected by the DU to the RES/Local RES/SOLR and remit the same to PSALM at least fifteen (15) days from DUs collection. For DCC qualified as Contestable Customer, universal charge shall be billed and collected directly by the NGCP and subsequently remit the same to PSALM based on the said required schedule.

Section 12. Separability

If for any reason any provision of these Transitory Rules is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

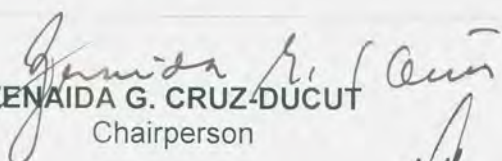

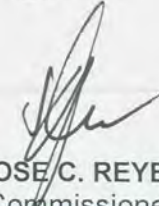
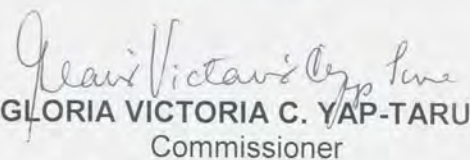

Section 13. Sanctions

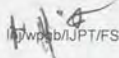
The ERC shall impose the appropriate fines and penalties for any violation or non-compliance with these Rules pursuant to the "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136, As Amended".

Section 14. Effectivity

These Rules shall take effect immediately following its publication in a newspaper of general circulation in the country.

Pasig City, December 17, _____, 2012

 ZENAIDA G. CRUZ-DUCUT Chairperson	
 MARIA TERESA A.R. CASTAÑEDA Commissioner	 JOSE C. REYES Commissioner
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