[ERC RESOLUTION NO. 16, S. 2008, December 15, 2008]

A RESOLUTION ADOPTING POLICIES TO GOVERN THE TRANSITION SUPPLY CONTRACTS WHICH HAVE BEEN ASSIGNED AND TRANSFERRED TO NATIONAL POWER CORPORATION SUCCESSOR GENERATING COMPANIES

WHEREAS, Section 67 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), requires the National Power Corporation (NPC) to file for the approval of the Commission Transition Supply Contracts (TSCs) duly negotiated with the Distribution Utilities (DUs);

WHEREAS, under the said provision, the term of the TSCs shall not extend beyond one (1) year from the introduction of actual open access and retail competition and that said contracts shall be assignable to the NPC successor genera ting companies;

WHEREAS, on separate dates, NPC filed applications for the approval of these TSCs, which were correspondingly approved by the Commission on 19 October 2006 for TSCs covering the Visayas and Mindanao grids and 06 February 2007 for TSCs covering the Luzon grid;

WHEREAS, subsequent approvals were likewise made by the Commission for extended terms of several TSCs on 22 September 2008;

WHEREAS, as a result of the privatization process envisioned under Section 47of the EPIRA, several NPC generation assets have been successfully privatized as a consequence of which several TSCs were assigned and transferred to the NPC successor generating companies;

WHEREAS, the Commission is cognizant that there are several TSCs whose terms are to expire even before one (1) year from introduction of open access and retail competition and that the NPC successor generating companies and the concerned DUs or other customers may require sufficient time to negotiate for the execution of new bilateral power supply contracts;

WHEREAS, the Assignability Clause of the TSCs states that any assignment shall not affect or impair the DUs’ rights and obligations with respect to quantity and price of electricity, contract effectivity, incentives, discounts and other terms and conditions of the contract where the assumption of the rights and obligations shall be made through a written instrument;

WHEREAS, issues have been raised with the Commission on the rates to be imposed by the DUs as a consequence of such transfer and assignment of TSCs particularly on (1) the TSC rate that should govern the transactions; (2) the Deferred Accounting Adjustment that the NPC-Successor Generating Companies may be authorized to implement; (3) the entitlement of the residential end-users of the affected DU to the Mandatory Rate Reduction under Section 72 of the EPIRA; and (4) corresponding Value Added Tax (VAT) that should be applied;

NOW THEREFORE, the Commission, after thorough and due deliberation, RESOLVED, as it hereby RESOLVES to ADOPT the following policies that would govern these TSCs which have been assigned and transferred to the NPC successor generating companies:

1. TSCs assigned and transferred to NPC successor generating companies shall retain their nature as such until the expiration of the term originally agreed upon in the contract or the extension granted by the Commission, provided that these contracts shall not extend beyond one (1) year from actual access and retail competition.

2. Prior to the expiration of the TSC which has been assigned and transferred, the NPC successor generating companies and the DUs are not precluded from negotiating for and entering into new bilateral power supply contracts that should govern the transactions between the parties.

3. In no case shall the TSC contract period be extended from the expiration of the original term of the TSC which has been assigned and transferred, unless expressly allowed by the Commission by virtue of the pendency of the approval of a new bilateral power supply contract between the parties. The negotiations leading to and filing for the approval of the new bilateral power supply contract shall be consistent with provisions of the Commission-approved *"Guidelines for the Recovery of Cost of the Generation Component of the Distribution Utilities' Rates* (The "Guidelines").

4. However, for TSCs which are set to expire within six (6) months from the effectivity of this Resolution, and without a new bilateral power supply contract being filed with and approved by the Commission, the terms and conditions of the contract shall be allowed to be extended, subject to mutual agreement by the parties and notice made to the Commission. Any extension under this provision shall not run beyond six (6) months from the effectivity of this Resolution.

5. For TSCs, the contract period of which have expired prior to effectivity of this Resolution, and without a new bilateral power supply contract filed with the Commission, the parties are given a period sixty (60) days from effectivity of this Resolution, within which to file for the approval of the new bilateral power supply contract with the Commission.

6. Meanwhile, the DUs which are covered by assigned TSCs which are set to expire prior to one year from open access shall be allowed to revert and renew their TSCs with NPC; *Provided that,* the concerned DU shall provide sufficient proof that reasonable and diligent efforts were exerted to negotiate with other generating companies other than NPC but the same failed; *Provided further that*, the said TSC is filed for approval by the Commission; *Provided finally that,* there is sufficient NPC dependable capacity to serve the requirements of the concerned DU for the duration of the TSC. Accordingly, NPC and the National Transmission Corporation (TransCo) are hereby enjoined to strictly comply with Section 1, Article IV