

[ERC RESOLUTION NO. 03, S. 2006, February 01, 2006]

GUIDELINES FOR THE ISSUANCE OF LICENSES TO RETAIL ELECTRICITY SUPPLIERS (RES), AS AMENDED

ERC CASE NO. 2005-02 RM

Pursuant to Sections 29 and 31 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations (IRR), the Philippine Distribution Code (PDC), and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates the following Guidelines for the issuance of licenses to qualified Retail Electricity Suppliers (RES).

**ARTICLE I
GENERAL PROVISIONS**

SECTION 1. Objectives

The following are the objectives of these Guidelines:

- a. To promote free and fair competition and accountability of Electric Power Industry Participants to achieve greater operational and economic efficiency, thereby rationalizing electricity prices and making them competitive and transparent;
- b. To ensure consumer protection and enhance the competitive operation of the retail electricity market.

SECTION 2. Guiding Principles

No Person, other than a Distribution Utility serving its franchise area and those authorized to supply electricity in Economic Zones, may engage in the supply of electricity to End-users in a Contestable Market unless such Person has secured a Supplier's License from the Energy Regulatory Commission.

The Supplier's License shall stipulate all the obligations of a Retail Electricity Supplier (RES) consistent with the qualifications and criteria required of a RES established herein and such other laws, rules and regulations pertinent thereto. A Supplier's License shall be issued upon compliance with the standards and requirements herein set forth.

SECTION 3. Issuance of a License

ERC shall issue a license to a qualified RES that complies with all applicable requirements stipulated herein such as, but not limited to, qualifications, conditionalities of cross-ownership, market power abuse, anti-competitive behavior and all other requirements which are deemed necessary for the proper implementation of these Guidelines.

No RES shall be allowed to engage in selling, brokering, marketing or aggregating of electricity to end-users or to participate in the WESM without a valid license from the ERC. A license obtained by a qualified RES from the ERC shall be valid within Philippine territories where retail competition and open access exist.

SECTION 4. Scope

This set of Guidelines shall apply to the following:

- a. A Generation Company or Affiliate thereof;
- b. A Distribution Utility that shall operate as a RES outside its franchise area;
- c. An Affiliate of a Distribution Utility with respect to the latter's Contestable Market within or outside its Franchise Area;
- d. An Independent Power Producer (IPP) Administrator; and
- e. Any other Person intending to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and its Implementing Rules and Regulations.

The ERC shall issue a separate set of Guidelines for Aggregators prior to the implementation of the second phase of retail competition and open access.

SECTION 5. Exempted from Securing a Supplier's License

- a. Distribution Utilities within their Franchise Areas; and
- b. Persons authorized by appropriate entities to supply electricity within their respective Economic Zones.

SECTION 6. Definition of Terms

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

Affiliate - Any Person which, alone or together with any other Person, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with another Person. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent;

Aggregator - A Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in the Contestable Market for the purpose of purchasing and reselling electricity on a group basis;

Applicant - A Person or entity seeking to obtain a license to become a supplier of retail electricity to Contestable Markets;

Buyer or Concessionaire - A qualified party awarded the sale agreement or concession contract for transmission assets;

Code of Conduct - The set of rules promulgated by ERC to govern the conduct of Retail Electricity Suppliers, Distribution Utilities, their stockholders, directors, officers and employees, within the boundaries of fair competition;

Competition Rules - The rules promulgated by ERC to promote and ensure competition in the electric power industry pursuant to the Act and its Implementing Rules and Regulations;

Contestable Market - 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;

Control - The power to direct or cause the direction of the management policies of a Person by contract, agency, or otherwise;

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 its franchise and the Act;

Economic Zones (EZs) - Selected areas which are highly developed or have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers, including but not limited to the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, Information Technology Parks and Tourist/Recreational Centers, the "Bases Conversion Development Authority" or "BCDA", "Cagayan Economic Zone Authority" or "CEZA", "Clark Development Corporation" or "CDC", "Philippine Economic Zone Authority" or "PEZA", "Phividec Industrial Authority" or "PIA", and "Zamboanga City Economic Zone Authority" or "ZCEZA";

Electric Power Industry Participant - Any Person or entity engaged in the generation, transmission, distribution or supply of electricity;

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;

Generation Company - Any Person or entity authorized by the ERC to operate facilities used in the generation of electricity;

Generation of Electricity - The production of electricity by a generation company or co-generation facility pursuant to the provisions of the Act;

Independent Market Operator (IMO) - A person who is financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity markets endorsed jointly by the Department of Energy (DOE) and Electric Power Industry Participants to assume the functions, assets and liabilities from the Autonomous Group Market Operator (AGMO), pursuant to Section 30 of the Act;

Independent Power Producer (IPP)- An existing power generating entity which is not owned by NPC;

IPP Administrator - Qualified independent entities appointed by PSALM Corporation which shall administer, conserve and manage the contracted energy output of NPC IPP contracts;

Licensee - The Person or entity which has already been granted a Supplier's License by the ERC;

Market Operator - 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 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;

National Power Corporation (NPC) - The government corporation created under Republic Act No. 6395, as amended;

National Transmission Corporation (TRANSCO) - The corporation organized pursuant to Section 8 of the Act to acquire all the transmission assets of the NPC;

Person - A natural or juridical person, as the case may be;

Philippine Stock Exchange (PSE) - The corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);

Power Sector Assets and Liabilities Management Corporation (PSALM) - The corporation created pursuant to Section 49 of the Act to take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets;

Related Group - A Person and any business entity controlled by that Person, along with the Affiliates of such business entity, and the directors and officers of the business entity or its Affiliates, and relatives by consanguinity or affinity, legitimate or common law, within the fourth (4th) civil degree, of the Person or any of the foregoing directors or officers;

Retail Competition - The provision of electricity to a Contestable Market by RES through Open Access;

Retail Electricity Supplier (RES) - Any Person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-users;

Retail Rate - The total price paid by End-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service;

Retail Supply Contract - The contract entered into by and between the Retail Electricity Supplier and the End-user;

Self-Generation Facility - 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;

Supplier's License - The authority granted by the ERC to any person or entity to act as Retail Electricity Supplier;

Supply of Electricity - The sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;

Uniform Business Practices (UBP) - The set of guidelines promulgated by ERC which prescribes the standardized business rules for DU-RES interactions, relating to customer enrollments, switching, exchange of metering, billing and payment information, and the like;

Universal Charge - The charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of the Act;

Wholesale Electricity Spot Market (WESM) - The wholesale electricity spot market established pursuant to Section 30 of the Act.

ARTICLE II QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A RETAIL ELECTRICITY SUPPLIER

SECTION 1. The following may apply as a RES:

- a. A natural person of legal age, duly registered with the Department of Trade and Industry (DTI) as engaged in the retail electricity supply business.
- b. A juridical person duly registered with the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC) and/or the Cooperative Development Authority (CDA) as an entity engaged in retail electricity supply business.

SECTION 2. An Applicant must possess any of the following credit standards to demonstrate that it has the financial capability required to undertake this business:

- i. Investment grade credit rating by a reputable credit bureau; or
- ii. Unused cash resources with an amount equivalent to the Applicant's expected monthly billings, or Php 5 million; or
- iii. Proof of creditworthiness confirmed through the certification of companies (including Generation Companies, Transco and Distribution Utilities) that have extended credit line to the Applicant.

SECTION 3 . The Applicant shall possess the technical and managerial capability to ensure reliable electricity supply in accordance with its customer contracts, such as but not limited to the following:

- a. Ability and knowledge to operate and manage an electricity supply business, which involves the requirement to understand the Commission's rules, codes and guidelines, and their application.
- b. Ability to set-up and operate within the 'customer-transfer system' approved by ERC, an automated information exchange associated with business to business (B2B) communications and transactions.
- c. Technical ability to enter into any necessary access or interconnection arrangements or other required contracts with Transco one or more Distribution Utilities;
- d. Technical ability to secure generation through compliance with all applicable requirements of the Market Operator , if applicable;
- e. Technical ability to meet its transactional requirements with the Market Operator or its contractual obligations with any industry participant, if applicable;
- f. Adequate staffing and employee training to meet all service level commitments.

SECTION 4. Ownership Limitation and Restrictions.

- a. A RES or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth (4th) civil degree of consanguinity or affinity, legitimate or common law, shall not own any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, or Independent Market Operator.
- b. Except for ex-officio government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any RES.

ARTICLE III REQUIREMENTS AND PROCEDURES

SECTION 1. The Applicant shall secure a Supplier's License from the ERC prior to engaging in the supply of electricity to End-users in the Contestable Market. Provided all the requirements shall have been complied with, ERC shall approve, disapprove, or reject an application within sixty (60) working days from the date of application unless ERC shall have required the submission of additional information, or ordered on reason- able grounds, the postponement of final action on an application.

SECTION 2. Basic Requirements. The following documents and information are required to be submitted by an Applicant:

- a. Articles of Incorporation/Partnership with Certificate of Registration (for juridical person);
- b. Business Name Registration Certificate (for single proprietorship);
- c. Mayor's Permit;
- d. RES Information Sheet (form to be prescribed by ERC);
- e. Certified true copies of audited balance sheet, cash flow, and income statement for the two most recent twelve (12)-month periods, or for the life of the business if not in existence for at least two (2) years, if applicable;
- f. If affiliate, certified true copies of audited balance sheet, cash flow and income statements for the two most recent 12-month periods of parent company;
- g. Projected Five-year Financial Statements and Five-year Business Plan (outline to be provided by ERC);