

[**ERC RESOLUTION NO. 06, S. 2005, April 14, 2005**]

ADOPTING THE GUIDELINES FOR THE FINANCIAL STANDARDS OF GENERATION COMPANIES

WHEREAS, under Section 43 (b)(ii) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the Energy Regulatory Commission (ERC) is mandated to promulgate and enforce a National Grid Code and a Distribution Code to include the financial capability standards for Generation Companies;

WHEREAS, pursuant to the said mandate, the ERC drafted the Guidelines for the Financial Standards of Generation Companies;

WHEREAS, on January 14, 2005, the ERC issued a Notice setting said Guidelines for public consultation and directing interested parties to submit their comments thereon on or before February 14, 2005;

WHEREAS, interested parties submitted their written comments and a public consultation was conducted on February 24, 2005;

WHEREAS, after conducting said public consultation, the ERC posted the second (2nd) draft of the said Guidelines on March 17, 2005 at the ERC Website;

WHEREAS, after said posting, a number of additional written comments were received and thereby considered by the ERC in its final deliberation of the said Guidelines;

WHEREAS, in accordance with the aforesaid mandate and after a careful consideration of the various views and comments submitted by interested parties, the ERC finds it appropriate to adopt the Guidelines for the Financial Standards of Generation Companies;

NOW, THEREFORE, be it RESOLVED, as it is hereby RESOLVED, to APPROVE and ADOPT, the "Guidelines for the Financial Standards of Generation Companies" hereto attached as ANNEX "A" and made an integral part of this Resolution.

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

Adopted: 14 April 2005

(SGD.) RODOLFO B. ALBANO, JR.
Chairman

(SGD.) JESUS N. ALCORDO
Commissioner

(SGD.) RAUF A. TAN
Commissioner

(SGD.) ALEJANDRO Z. BARIN
Commissioner

ANNEX A

ERC CASE NO. 2005-01 RM

GUIDELINES FOR THE FINANCIAL STANDARDS OF GENERATION COMPANIES

**ARTICLE I
GENERAL PROVISIONS**

1.1 Background

1.1.1 Philosophy / Rationale

Pursuant to Section 6 of Republic Act No. 9136 and its Implementing Rules and Regulations, electric power generation, a business affected with public interest, shall be competitive and open. Primarily guided by its mandate to ensure quality and reliable delivery of power service to the public and to protect electricity consumers, the Energy Regulatory Commission (ERC) hereby prescribes and implements the financial standards required by law for the generation sector of the electricity industry.

1.1.2 Objectives

1.1.2.1 Financial capability standards are required by the Philippine Grid Code to be complied with by Generation Companies (GENCOs) in order to:

- a. Promote the overall financial viability of the generation sector;
- b. Ensure the affordability of electric power supply while maintaining the required quality and reliability; and
- c. Protect the public interest.

1.1.2.2 This set of Guidelines is promulgated to:

- a. Identify the minimum financial capability standards for GENCOs;
- b. Prescribe the frequency and form of GENCO submissions; and
- c. Prescribe the actions for non-compliance with the minimum financial standards for GENCOs

1.1.3 General Principles

1.1.3.1 These Guidelines will set the minimum financial capability standards for GENCOs as required by Chapter 4 of the Philippine Grid Code. However, ERC may require other/additional standards for compliance in connection with other applications filed/to be filed before it by the GENCO.

1.1.3.2 To promote continuous improvement in efficiency and financial performance in the sector, ERC may revise/update the financial capability standards deemed necessary.

1.2 Definition of Terms

a. Debt - any indebtedness of the borrower maturing by its terms more than one year after the date on which it is originally incurred (including that portion of any such debt payable within one year from the date of any debt-service ratio calculation), provided that debt shall be counted only to the extent that it is drawn down and outstanding

b. Debt Service - aggregate annual amount of debt repayments (including lease obligations under power purchase agreements and sinking fund payments, if any) and interest and other charges on debt, including capitalized interest during construction on loans for capital expenditures

c. Debt Service Capability Ratio (DSCR) or Interest Cover Ratio - the measure of the GENCO's ability to fulfil its debt obligations; computed in 2 ways: (1) ratio of Cash Flow From Operations after Taxes to Debt Service, and (2) ratio of Earnings before Interest and Taxes (EBIT) plus depreciation to debt service. For purposes of computing this ratio, Cash Flow from Operations After Taxes shall be derived from the audited financial statements and shall exclude interest received and interest paid. Amortization expenses shall also be treated similarly to depreciation.

d. Earnings Before Interest and Taxes - equal to revenues less expenses from the GENCO's principal business activities; is identical to income from operations as determined under Philippine Generally Accepted Accounting Principles

e. Generation Company or GENCO - refers to any person or entity authorized by ERC to operate facilities used in the generation of electricity;

f. Generation Facility - refers to a facility for the production of electricity;

g. Lease - an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time^[2]

g.1 Capital or Financial Lease - a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not be transferred.

g.2 Operating Lease - a lease other than a capital lease

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

1.3 Scope of Application

1.3.1 These Guidelines shall apply to all generation companies, including but not limited to:

- a. Entities which own and operate a generation facility;
- b. Entities which own a generation facility that is operated by another entity under any management contract;
- c. Entities which hold a Capital Lease on generating assets; and
- d. Entities which hold an Operating Lease on generating assets.

1.3.2 In cases where the owner and operator of the generation facility are not the same entity, both owner and operator shall be covered by the financial standards, unless it can be established to the satisfaction of the ERC that only one of the two has control over the prices and/or quantities of the output of the generation facility and as such should be the only one covered by the financial standards prescribed herein.

1.3.3 An entity which owns only generation facilities used exclusively for its own consumption shall be exempted from compliance with the standards required under these Guidelines.

ARTICLE II FINANCIAL STANDARDS

2.1 Financial Benchmark

2.1.1 A generation company is required to meet a minimum annual Interest Cover Ratio or DSCR of 1.5x throughout the period covered by its COC.

2.1.2 The use of the other financial standards prescribed in Chapter 4.2 of the Philippine Grid Code to evaluate the financial capability of a GENCO shall be optional on the part of the ERC.

ARTICLE III REQUIREMENTS AND PROCEDURES

3.1 For COC applicants and renewals:

3.1.1 Comparative audited financial statements for the most recent 12-month period, if available;

3.1.2 Schedule of liabilities, to include the following information: name of creditor, type of credit, credit terms;

3.1.3 Five (5) year financial plan (i.e., forecast financial statements, including assumptions/bases used for revenue and cost projections); and

3.1.4 Documentation on financial track record of the GENCO and of its principal stockholder, if available.

3.2 Annual submissions for the duration of the COC: