

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



RESOLUTION NO. 22, Series of 2006

A RESOLUTION PROMULGATING THE RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED UNVIABLE BY THE DEPARTMENT OF ENERGY

WHEREAS, Section 43 (t) Republic Act. No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), authorizes the Energy Regulatory Commission (ERC) to perform such "regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry...;"

WHEREAS, on 16 December 2005, the ERC posted the "Proposed Guidelines for the Regulation of Qualified Third Parties Performing Missionary Electrification in Areas Declared Unviable by the Department of Energy" (Proposed Guidelines) on its official website (www.erc.gov.ph) for comments;

WHEREAS, on 16 January 2006, the ERC issued a Notice of Public Consultations which indicated the scheduled dates and venues for the public consultations on the Proposed Guidelines, as follows:

Date	Venue
30 January 2006	General Santos City
9 February 2006	Iloilo City
27 February 2006	Palawan

WHEREAS, the ERC conducted public consultations on the dates and venues specified above;

WHEREAS, in the interest of hearing additional comments and opinions on the Proposed Guidelines, the ERC issued a Notice dated 17 February 2006, scheduling two (2) additional public consultation dates in the following venues:

Date	Venue
9 March 2006	Tuguegura City
20 March 2006	Digos City

WHEREAS, the ERC received two (2) written comments on the Proposed Guidelines and oral comments given during the scheduled public consultations and the same were considered in its deliberations on the Proposed Guidelines and the necessary revisions were made thereto;

WHEREAS, in accordance with its mandate under the EPIRA, after consideration of the various views and comments submitted and manifested by interested parties, and based on its own study and analysis, the ERC finds it appropriate to approve the Proposed Guidelines with the revisions adopted by the Commission, including the change in its title to the "Rules for the Regulation of Qualified Third Parties Performing Missionary Electrification in Areas Declared Unviable by the Department of Energy;"

NOW, THEREFORE, the ERC hereby **RESOLVES**, as it is hereby **RESOLVED**, to **PROMULGATE** the **RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED UNVIABLE BY THE DEPARTMENT OF ENERGY**, which is hereto attached.

Pasig City, 3 May 2006



RODOLFO B. ALBANO JR.
Chairman



OLIVER B. BUTALID
Commissioner



JESUS N. ALCORDO
Commissioner



RAUF A. TAN
Commissioner



ALEJANDRO Z. BARIN
Commissioner

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

**RULES FOR THE REGULATION OF QUALIFIED THIRD PARTIES
PERFORMING MISSIONARY ELECTRIFICATION IN AREAS DECLARED
UNVIABLE BY THE DEPARTMENT OF ENERGY**

Pursuant to Section 59 (Alternative Electric Service for Isolated Villages) in relation to Section 70 (Missionary Electrification) and Section 34 (Universal Charge) of Republic Act No. 9136, otherwise known as the "*Electric Power Industry Reform Act of 2001*" ("EPIRA"), and its Implementing Rules and Regulations ("EPIRA-IRR"), and cognizant of the policies of the Department of Energy (DOE) as expressed in DOE Department Circular DC2004-06-006 entitled "*Prescribing the Qualification Criteria for the Qualified Third Party*" and DOE Department Circular No. DC2005-12-011 entitled "*Prescribing the Guidelines for Participation of Qualified Third Parties (QTPs) for the provision of Electric Service in Remote and Unviable Areas, Pursuant to Sections 59 and 70 of the Electric Power Industry Reform Act and its Implementing Rules and Regulations*" for the promotion of rural electrification, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules for the regulation of Qualified Third Parties (QTPs) operating in Declared Unviable Areas by the DOE.

ARTICLE I

General Provisions

Section 1. Purpose. - These Rules shall establish the framework and procedure for:

(a) Determining how ERC will qualify and authorize electric service providers in unviable areas, consistent with Rule 14 (*Provision of Electricity by Qualified Third Parties*) of the EPIRA-IRR, and in pursuance of the State's policies to ensure and accelerate the total electrification of the country and enhance the inflow of private capital and participation of private sector in attendant risks, in the energization of remote and unviable areas of the country through Qualified Third Parties;

(b) The issuance of the necessary permits required by the EPIRA for Qualified Third Parties to provide electricity service in Declared Unviable Areas; and

(c) Setting the rates, subsidies and service standards for Qualified Third Parties.

Section 2. Definition of Terms. -

(a) **“Authority to Operate”** or **“ATO”** refers to the authorization issued by the ERC to the QTP which shall constitute as the latter’s license to provide electricity and related services, including as necessary, generation of electricity in a specified QTP Service area;

(b) **“Certificate of Compliance”** or **“COC”** refers to a certificate given to an Entity by the Energy Regulatory Commission to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of the EPIRA and Sections 4 and 5 of the EPIRA-IRR;

(c) **“Delegated NPC-SPUG Area”** refers to an area not connected to the national grid transmission system where a New Power Provider (NPP) or NPPs act on behalf of NPC-SPUG in providing electric generation services and its associated power delivery systems;

(d) **“Declared Unviable Area”** refers to an Unviable Area which the DOE has declared to be open for participation by Qualified Third Parties, in accordance with Section 59 of EPIRA and Section 3 of Rule 14 of the EPIRA-IRR, after the waiver thereof by the concerned Distribution Utility for inclusion in the DOE’s Qualified Third Party Program;

(e) **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638;

(f) **“Distribution Code”** or **“Code”** refers to the term defined in Section 4(m) of the EPIRA and Rule 4(y) of the EPIRA-IRR;

(g) **“Distribution Utility”** or **“DU”** refers to 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 EPIRA as defined in Section 4(q) of the EPIRA and Rule 4(cc) of the EPIRA-IRR;

(h) **“Electric Cooperative”** or **“EC”** refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, as defined in Section 4(r) of the EPIRA and Rule 4(ee) of the EPIRA-IRR;

(i) **“Electricity Service”** refers to the service embodied in the QTP Service Contract duly endorsed by the DOE;

(j) **“Energy Regulatory Commission”** or **“ERC”** refers to the independent, quasi-judicial regulatory agency created under Section 38 of EPIRA,

(k) **“Entity”** refers to any person or body corporate, and may include a cooperative or a local government unit;

(l) **“EPIRA”** refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;

(m) **“EPIRA-IRR”** refers to the Implementing Rules and Regulations of the EPIRA;

(n) **“Full Cost Recovery Rate”** or **“FCRR”** refers to the rate, expressed in Peso per kilowatt-hour, that recovers the full efficient costs of providing Electricity Service sufficient to enable the Qualified Third Party to operate viably;

(o) **“Missionary Electrification”** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels, including the provision of power generation and its associated power delivery systems in areas that are not connected to the national grid transmission system;

(p) **“Missionary Electrification Subsidy”** or **“ME Subsidy”** refers, for purposes of these Rules, to the fund duly approved by the ERC to cover the difference between the FCRR and the Subsidized Approved Retail Rate of a Qualified Third Party sourced from the Universal Charge for Missionary Electrification;

(q) **“National Power Corporation - Small Power Utilities Group”** or **“NPC-SPUG”** refers to the functional unit of NPC created to pursue missionary electrification function as defined in Section 4(tt) of the EPIRA and Rule 4(bbbb) of the EPIRA-IRR;

(r) **“Qualified Third Party”** or **“QTP”** refers to an alternative electric service provider that meets the standards in and is chosen in accordance with DOE Circular No. 2005-12-011, and is duly qualified and authorized by the ERC to serve Declared Unviable Areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR;

(s) **“QTP Service Area”** refers to the geographic area corresponding to the Unviable Area/s where QTP shall be authorized to provide Electricity Service as stipulated in the QSC;

(t) **“QTP Service Contract”** or **“QSC”** refers to the contract entered into by NPC and the QTP, duly approved by the ERC, defining the QTP’s responsibilities in undertaking missionary electrification in Declared Unviable Areas. This contract shall set the terms and conditions by which the QTP shall provide the Electricity Service, and shall include the tariff levels, other electric service charges, and the applicable performance and service standards to be met by such QTP;

(u) **“Selection Process”** refers to the formal steps undertaken by the DOE to choose, in accordance with the criteria set forth in DOE Circular No. 2005-12-011, the prospective QTP that can apply for authorization with the ERC for the provision of Electricity Service in a Declared Unviable Area;

(v) **“Subsidized Approved Retail Rate”** or **“SARR”** refers to the rate, expressed in Peso per kilowatt-hour, that the ERC has determined to be the maximum that an end-user in a Declared Unviable Area shall pay for the Electricity Service provided by a QTP in that Declared Unviable Area;

(w) **“Subsidy and Disbursement Agreement”** or **“SDA”** refers to the agreement entered into between the QTP and NPC setting forth the terms and conditions governing the QTP’s avilment of the UC-ME subsidy to allow it to viably serve the QTP Service Area;

(x) **“Retail Rate”** refers to the total price paid by end-users consisting of the charges for generation, transmission, and related ancilliary services, distribution, supply and other related charges for electricity services as defined in Rule 4(uuu) of the EPIRA-IRR;

(y) **“Universal Charge”** or **“UC”** refers to the charge, if any, imposed for the recovery of stranded cost and other purposes pursuant to Section 34 of the EPIRA as defined in Section 4(ddd) and 34 of the EPIRA and Rule 4(rrrr) and Rule 18 of the EPIRA-IRR;

(z) **“Universal Charge for Missionary Electrification”** or **“UC-ME”** refers to the portion of the Universal Charge which is designated for Missionary Electrification;

(aa) **“Unviable Area”** refers to a geographical area within the franchise area of a DU where the immediate extension of distribution line is not feasible, as defined by Rule 4 (ssss) of the EPIRA-IRR. For purposes of these Rules, Unviable Areas shall also include those areas which are currently served by the concerned DU but are deemed unviable and are subsequently declared by the DOE as open for participation by Qualified Third Parties; and

(bb) **“Waiver Contract”** refers to the contract entered into between the DU and the QTP pursuant to Rule 14, Section 5(a) of the EPIRA IRR wherein the DU transfers the responsibility to service the area described therein to the QTP. For avoidance of doubt, the contract shall be with a period and during its existence, the DU’s franchise shall not be deemed as transferred, abandoned and/or modified with respect to the area included therein, as only the right to service such area shall be deemed assumed by the QTP.

Section 3. Scope. - These Rules shall apply to Entities which seek to provide Electricity Service as QTPs in Declared Unviable Areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR.

ARTICLE II

Qualification and Authorization of Entities to Provide Electricity Service in Declared Unviable Areas

Section 1. Who may become QTPs. - The following may be considered as QTPs:

(a) An Entity, except a DU whose franchise includes the Declared Unviable Area being applied for service by QTP, who was determined as a prospective QTP, in accordance with the Selection Process conducted by the DOE for Declared Unviable Areas; or

(b) An Entity, other than the concerned DU, its affiliate or subsidiary, who, prior to the issuance of these Rules, without undergoing the DOE's Selection Process, is already engaged in providing electricity service in an Unviable Area; provided that, the same or a portion thereof becomes a Declared Unviable Area.

An affiliate or subsidiary of a DU may participate in the Selection Process of the DOE with respect to a Declared Unviable Area within such DU's franchise area and become a prospective QTP therein under Section 1 (a), provided that there is complete business, operational, and functional separation between such affiliate or subsidiary and the concerned DU.

Section 2. Qualification and Authorization of Entities under Section 1 (a) to Operate as QTPs. - An Entity who is pre-qualified by the DOE under DOE Department Circular 2004-06-006 and selected as a prospective QTP through the DOE's Selection Process for a specific Declared Unviable Area, shall file an application with the ERC for authorization to provide Electricity Service in a specific Declared Unviable Area as a QTP and for issuance of its corresponding ATO and for approval of its QSC with NPC. Together with its application, it shall submit the following:

(a) QSC between the QTP and NPC;

(b) Waiver Contract signed by the concerned DU and the QTP;

(c) SDA signed between the QTP and NPC, if any;

(d) DOE Certification that the QTP was pre-qualified in accordance with DOE Circular 2004-06-006 and DOE Circular 2005-12-011;

(e) DOE Certification that the QTP was determined based on the DOE's Selection Process;

(f) Relevant technical details of engineering design of the proposed system, including the generation facilities and associated delivery systems, if necessary;

(g) Relevant financial details of the project, if necessary;

(h) Other necessary permits to implement the project, including environmental certificate from appropriate government agencies; and

(i) Other documents and information that the ERC may require.

Section 3. Qualification and Authorization of Entities under Section 1 (b) to Operate as QTPs. - An Entity falling under Section 1 (b) who intends to continue operating as a QTP shall file an application with the ERC, within One (1) Year from effectivity of these Rules, for authorization to provide, as a QTP, Electricity Service in a specific Declared Unviable Area where it is already operating as an electricity service provider. Together with its application, it shall submit the following and submit the following:

(a) QSC between the QTP and NPC;

(b) Waiver Contract signed by the concerned DU and the QTP;

(c) SDA signed between the QTP and NPC, if any;

(d) Data regarding the continuation of operations of the applicant in the Declared Unviable Area;

(e) DOE Certification that the area already being served by applicant is a Declared Unviable Area;

(f) Relevant technical details of engineering design of the system used by applicant, including the generation facilities and associated delivery systems, if necessary;

(g) Relevant financial details of applicant's operations, if necessary;

(h) Other necessary permits, including environmental certificate from appropriate government agencies, if applicable, secured by applicant; and

(i) Other documents and information that the ERC may require.

Section 4. ERC Action on the Application. - Upon the filing of the application, the ERC may, on its own or upon motion, grant a Provisional Authority (PA) based on the allegations of the application and on such other

documents attached thereto or submitted by the parties. The ERC, if necessary, may schedule a hearing for the issuance of a PA not later than thirty (30) days from the filing of the application. Thereafter, the Commission shall issue a ruling either granting or denying the PA stating clearly the reasons therefor, within seventy five (75) days from the filing of the application.

The ERC shall decide the application within sixty (60) days from the time the applicant formally offers its evidence; otherwise, the application shall be deemed approved upon the lapse of said period. Its decision approving the application shall constitute as the applicant's license or ATO within the Declared Unviable Area applied for as a QTP.

Section 5. NPC Performing the Functions of the QTP. - In the event that no QTP qualifies to provide Electricity Service to a Declared Unviable Area, NPC-SPUG shall act as the provider of last resort and perform the functions of the QTP. NPC shall include its ME Subsidy requirements in its application to the ERC as provided in Section 3(a) of Article IV.

Section 6. Special Rules for Small QTPs not Requiring Subsidies. - An Entity providing Electricity Service in a Declared Unviable Area which:

(a) has a generating capacity below 200 kW; or

(b) has fewer than 100 connections;

and

(c) does not seek to avail of a Missionary Electrification Subsidy because its retail rate is equal to or lower than the ERC-approved SARR in the Declared Unviable Area where it operates,

shall be deemed qualified and authorized to act as QTP upon issuance of a COC in its favor, provided that such authorization shall be valid only during the effectivity of the COC, while the above conditions are satisfied, or upon revocation by the ERC, whichever comes earlier.

If the above conditions are no longer prevailing, said Entity shall comply with Article II, Section 2 or 3, as applicable, if it intends to continue operating as a QTP.

Section 7. QTP Service Contracts (QSCs). - The QSC between a QTP and NPC shall include the following:

(a) A clear description of the scope of services to be offered by the QTP, including schedule for the target connections, and modalities of payment collections, among others;

(b) The Full Cost Recovery Rate (FCRR) and an adjustment mechanism provision, if any, that promotes fair and reasonable consumer tariffs in accordance with the level of service provided by the QTP;

(c) Efficient allocation of risk;

(d) The term of the QSC, which shall be commensurate to recover the necessary investment of the QTP, but in no case to exceed twenty (20) years;

In the event that the QSC's term exceeds the remaining franchise term of the concerned DU, the QSC's term shall be shortened and the FCRR adjusted accordingly, unless Congress grants such DU an extension or renewal of its franchise;

(e) The responsibility of the QTP to ensure, at all times, consumer safety and protection; and

(f) The applicable service and safety standards as provided in Article III.

Section 8. Other Required Permits. - A QTP whose Electricity Service includes the generation of electricity shall likewise be required to secure a COC from the ERC in accordance with the ERC's *Guidelines for the Issuance of Certificate of Compliance for Generation Companies/ Facilities, as Amended*.

ARTICLE III

Service Standards and Compliance with the Distribution Code

Section 1. Service Standards and Compliance with the Distribution Code - Service and safety standards that the ERC shall require QTPs to meet, which may include applicable provisions of the Distribution Code, shall be included as specific terms and conditions of the QSC.

Section 2. Rules for the Setting of Service and other Standards. - Given the different technical configurations of the facilities that the QTP may propose to construct, the ERC hereby adopts the following rules for setting the service and other operating standards for QTP operation, on a case-to-case basis:

(a) The ERC shall have the full authority to set the actual parameters to be followed by any QTP during its review of the technical design for applicable generating facilities and associated delivery systems and inspection of the actual construction of entire system. The service and other operating standards specified in the approved QSC shall be used as the basis of ERC's evaluation of the technical and operating performance of the QTP.

(b) ERC shall allow special operating standards for low-cost electrification solutions to cater to the socio-economic conditions of the target customers in the Declared Unviable Areas.

(c) As a general rule, the QSC must conform to the following requirements of the Philippine Distribution Code for safety and acceptable service standards for the consumers, subject to the size of QTP and the ability to pay of the target customers:

(i) Below One (1) MW: those provisions of the Philippine Distribution Code that represent the minimum for safety standards; and

(ii) One (1) MW and above: those provisions of the Philippine Distribution Code that represent the minimum for safety and service standards.

ARTICLE IV

Process for Setting and Adjusting the Full Cost Recovery Rate (FCRR), the Subsidized Approved Retail Rate (SARR) and Missionary Electrification Subsidy (ME Subsidy)

Section 1. Determination of the FCRR. - In the QTP's application with the ERC for authorization to provide Electricity Service in a specific Declared Unviable Area as a QTP and issuance of its corresponding ATO and for approval of its QSC with NPC, it shall indicate its proposed FCRR. The ERC shall evaluate and set the appropriate FCRR, as follows:

(a) For areas where two or more qualified Entities participated in the DOE's Selection Process, the FCRR shall be that FCRR proposed by the selected Entity.

(b) For areas where there is only one Entity who participated or qualified in the Selection Process, the FCRR shall be determined using the twelve percent (12%) Return on Rate Base (RORB) methodology or some other appropriate methodology as benchmark for determining if the proposed FCRR of such Entity is reasonable.

(c) For applications filed pursuant to Section 3 of Article II, the ERC shall also use the twelve percent (12%) Return on Rate Base (RORB) methodology or some other appropriate methodology as benchmark for determining if the proposed FCRR is reasonable.

Section 2. Rules for Setting the Subsidized Approved Retail Rate (SARR) - NPC-SPUG shall file an application with ERC for the setting of the maximum retail rate which customers should pay for electricity in QTP Service Areas. Based on this application, the ERC will establish the maximum

Subsidized Retail Rate (SARR). This rate may be uniform throughout the Philippines, or may be established at different levels for different areas, according to the state of development of the areas.

Pending ERC approval of the NPC-SPUG Application, the SARR for a particular QTP Service Area shall be the ERC-approved and existing retail rate of the waiving DU.

Where the full cost of serving an area is higher than the SARR, an ME Subsidy may be offered to the QTP operating in the area to allow it to viably serve the same while charging no more than the SARR. In such cases, revenues from the SARR combined with the ME Subsidy should put the QTP in the same financial position as if it was able to charge the FCRR.

Section 3. Rules for Setting the ME Subsidy. - Consistent with the NPC-SPUG filing for UC-ME for Delegated NPC-SPUG Areas as provided for in ERC Resolution No. 11, Series of 2005 entitled "*Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas*," the following requirements and procedures shall be followed in the submission, evaluation and approval of the UC-ME for QTP areas.

(a) **Periodic Filing.** On or before September 30 of every calendar year, NPC-SPUG shall file its application with the ERC to set the UC-ME sufficient to cover the ME Subsidy estimated requirements for NPC-SPUG, including the amount needed to sufficiently cover the ME Subsidy requirements of QTPs.

In its decision, the ERC shall specifically indicate the amount, expressed in Peso per Kilowatt-hour, allocated for QTPs.

(b) **Quarterly True-Up Adjustments.** NPC-SPUG shall file a quarterly application, if necessary, with the ERC to recover any shortfall in the ME Subsidy caused by factors such as:

- (i) Collection shortfall;
- (ii) Adjustments in the FCRR; and
- (iii) Other analogous cases.

(c) **Administration of ME Subsidy.** NPC-SPUG shall establish a separate trust account wherein all UC-ME transfers allocated to QTPS from the PSALM administered Special Trust Fund will be deposited. This bank account will be governed by a set of predefined rules. The administrator of the account will make disbursements to the QTPs according to such rules. The transfer rules from the Account Administrator to the QTPs will also be defined in the SDA signed by the QTP and NPC-SPUG.

(d) **Reconciliation of Actual UC-ME.** On or before the first quarter of the calendar year, NPC-SPUG shall reconcile all amounts received against all disbursements made for the previous year. If the reconciliation results in NPC having surplus funds, the amount of the ME Subsidy for the year shall be adjusted accordingly. Conversely, if the reconciliation results in the NPC-SPUG experiencing a deficiency, NPC-SPUG shall be entitled to file an application for an increase in the ME Subsidy to cover the shortfall.

(e) **Priority in the UC-ME.** The Missionary Electrification Development Plan (MEDP) shall indicate the priority or allocation among the UC-ME supported activities. In any event, QTPs shall be *pari passu* or equal in priority with all NPPs in Delegated NPC-SPUG areas which require ME Subsidies. However, small QTPs which are identified in the MEDP shall enjoy higher priority on the provision of subsidy over larger QTPs and NPPs.

(f) **Automatic Adjustment to UC-ME.** If as a result of factors outside its control, NPC-SPUG is unable to file an acceptable UC-ME application for Delegated NPC-SPUG Areas and/or QTPs before September 30, or the ERC is unable to issue a UC-ME Decision before the end of the Calendar Year, the UC-ME approved by the ERC for the previous calendar year will be automatically adjusted based on the following formula and events:

$$UCME_t = UCME_{t-1} \times AF_t$$

Where:

t = Forthcoming year
t-1 = Current year
UCME_{t-1} = UC-ME (PhP/kWh) approved for the current year
AF_t

If NPC-SPUG fails to file an acceptable UC-ME application with the ERC before September 30 of the current year:

= 0.5 when t = 2006
= 0.6 when t = 2007
= 0.7 in all other subsequent years

If ERC is unable to issue a UC-ME Decision before December 31 of the Current Year:

= 1.00.

Nothing in this provision shall be construed as allowing the reduction in the subsidy allocation of small QTPs as identified in the MEDP.

Section 4. Rules for Adjusting the FCRR and the SARR. - The FCRR and the SARR for a QTP Area may be adjusted as follows:

(a) The FCRR may be adjusted automatically on a monthly basis by the QTP to reflect changes in the price of fuel, foreign exchange rates or other input costs, in accordance with the Retail Rate adjustment rules set out in the QSC for that Area.

(b) After a period of time, the ERC may undertake a review of the SARR, to reset the rate at a new level. Increases in the SARR may be made to:

- (i) Directly reflect increases in the FCRR; and
- (ii) Reduce the amount of the subsidy required.

Article V

Miscellaneous Provisions

Section 1. Nothing in these Rules shall be construed as to limit the authority of the DOE to declare what Unviable Areas, regardless of whether or not the concerned DUs waive such areas, shall be open for participation by QTPs under Section 3, Rule 14 of the EPIRA-IRR.

Section 2. Consistent with Section 5 (a), Rule 14 of the EPIRA-IRR, in case the DU fails to provide electricity to an Unviable Area, or if such service made available to the area is not comparable to the service provided to the rest of the DU's franchise area, and such DU refuses to waive said Unviable Area for inclusion in DOE's QTP Program, the ERC shall, upon petition by any affected party or on its own initiative, after due notice and hearing, endorse the Unviable Area to the DOE for inclusion in its QTP Program and require the DU to execute a Waiver Contract with the QTP chosen in accordance with the DOE's CSP to provide Electricity Service in such Unviable Area.

Section 3. The ERC may exempt the QTPs from its requirements imposed on generation companies and distribution utilities on the grid as it deems appropriate.

Article VI

Separability

If for any reason, any section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

Article VII

Effectivity

These Rules shall become effective fifteen (15) days after its publication in a newspaper of general circulation or filing thereof with the Office of the National Administrative Registrar at the University of the Philippines Law Center, whichever comes earlier.

Pasig City, 3 May 2006



RODOLFO B. ALBANO JR.
Chairman



OLIVER B. BUTALID
Commissioner



JESUS N. ALCORDO
Commissioner



RAUF A. TAN
Commissioner



ALEJANDRO Z. BARIN
Commissioner