

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

**RESOLUTION NO. 01, Series of 2009**

**A RESOLUTION ADOPTING THE AMENDMENTS TO THE  
GUIDELINES TO THE SALE AND TRANSFER OF TRANSCO'S  
SUBTRANSMISSION ASSETS AND THE FRANCHISING OF  
QUALIFIED CONSORTIUMS**

**WHEREAS**, on October 17, 2003, the Energy Regulatory Commission (ERC) issued the "Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums";

**WHEREAS**, on March 17, 2005, the ERC amended the said Guidelines requiring third-party appraisal of TRANSCO's subtransmission assets;

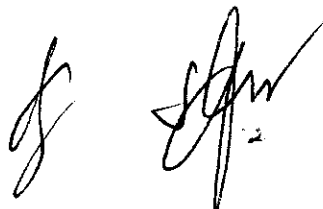
**WHEREAS**, on various dates, the stakeholders raised several issues which prompted the ERC to revisit the provisions of the said Guidelines, namely: 1) terms and conditions in the lease purchase agreement; 2) eligibility of entities operating within ecozones to purchase subtransmission assets; 3) eligibility of directly connected end-users to purchase subtransmission assets *vis-a-vis* the franchised DU; 4) costs of right-of-way acquisition; 5) asset valuation (third-party appraisal of subtransmission assets); 6) TRANSCO rates; 7) subscription rights; and 8) eligibility of qualified consortiums to apply for a franchise;

**WHEREAS**, the ERC sees the need to amend the said Guidelines, particularly, Articles II, IV, V and VI thereof;

**WHEREAS**, the ERC posted on its website the first and second proposed amendments to the said Guidelines on July 1, 2008 and November 11, 2008, respectively, and set the deadline for submitting comments thereon on December 2, 2008;

**NOW, THEREFORE**, the ERC, after thorough and due deliberation, **RESOLVES**, as it is hereby **RESOLVED** to **ADOPT** the amendments to the "Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums" as contained in "**Annex A**" hereof.

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




Let copies of this Resolution be furnished the University of the Philippines  
Law Center-Office of the National Administrative Register (UPLC-ONAR).

**Pasig City, January 26, 2009.**

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

  
**JOSE C. REYES**  
Commissioner

**ANNEX "A"**

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Ortigas Avenue, Pasig City

**GUIDELINES TO THE SALE AND TRANSFER OF  
TRANSCO'S SUBTRANSMISSION ASSETS AND  
THE FRANCHISING OF QUALIFIED CONSORTIUMS**

This is to amend Articles II, IV, V and VI of the Guidelines to the Sale and Transfer of TRANSCO'S Subtransmission Assets and the Franchising of Qualified Consortiums.

Article II of the said Guidelines is hereby amended to read as follows:

**"Article II**

**SCOPE AND DEFINITION OF TERMS**

**Section 1. Scope** - These Guidelines shall apply to:

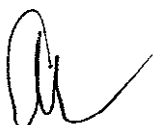
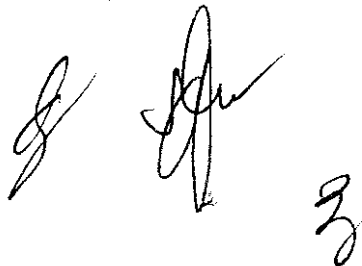
- a) TRANSCO;
- b) Buyer or Concessionaire of the TRANSCO; and
- c) Any Qualified Distribution Utility or Qualified Consortium or entities duly authorized by Philippine Economic Zone Authority (PEZA) to operate within the Economic Zones (EZs) that intend to or shall acquire and assume responsibility for operating, maintaining, upgrading, and expanding a Subtransmission Asset of the TRANSCO or its Buyer or Concessionaire.

For subtransmission facilities directly serving end-users and no DU is connected to the same facilities, the DU who holds the franchise where the end-user is located shall be the only party qualified to acquire such facilities.

**Section 2. Definition of Terms** – As used in these Guidelines, the following terms shall have the following respective meanings:

"x x x

(j) **"Entities duly authorized by PEZA to operate within the EZs"** shall refer to entities which have been granted by PEZA, pursuant to the provisions of Republic Act No. 7916 (The Special Economic Zone Act of 1995), a Certificate of Registration as an Ecozone Utilities Enterprise authorized to install and operate power distribution facilities exclusively within the proclaimed ecozone area;"



Article IV of the said Guidelines is hereby amended to read as follows:

**“Article IV**

**QUALIFICATION CRITERIA OF DISTRIBUTION UTILITIES  
OR CONSORTIUM OF DISTRIBUTION UTILITIES**

**Section 1. Technical Capability Criteria** – The technical criteria for qualification shall include but not limited to the following:

- a) Should have at least one year experience in the operation and maintenance of a line with voltage level equivalent to that of the Subtransmission Asset to be acquired. A Distribution Utility without the necessary experience should undergo at least a one month training program from TRANSCO/Concessionaire at its own expense.
- b) Should have a reasonable level of inventory of materials used for immediate replacement during emergency repair and maintenance of the assets being purchased.
- c) Should have at least two years experience in the operation and maintenance of substation facilities and have qualified personnel for metering, protection and instrumentation, transformer testing and evaluation. A Distribution Utility without the necessary experience should undergo at least a one-month training program from TRANSCO/Concessionaire at its own expense.
- d) Should have a combined weighted average of not more than 80% in reliability performance for the most current year (System Average Interruption Frequency Index [SAIFI] or Interruption Frequency Rate [IFR] – 50% and System Average Interruption Duration Index [SAIDI] or Cumulative Interruption Time [CIT] – 50%). The standard is set at 20 times for SAIFI or IFR and 45 hours for SAIDI or CIT. Excluded events specifically approved for a DU or group of DUs shall not be included in the computation of reliability performance. A Distribution Utility not meeting the criterion shall provide an explanation to be considered by the ERC.
- e) Should have submitted to the ERC its Statement of Compliance to the Philippine Grid and Distribution Codes.
- f) Should be in full compliance with DSC-PGC-019 (Maintenance Program) and DSC-PDC-038 (Maintenance Program) and at least two other requirements of the Philippine Grid and Distribution Codes. A Distribution Utility not meeting the criterion may provide an explanation to be considered by the ERC.

The Distribution Utility may submit other relevant information to be considered by the ERC in determining its technical capability.



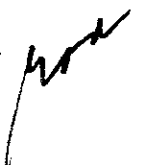
A Distribution Utility who fails to meet any of the criteria above-prescribed may, in the alternative, submit an Operation and Maintenance contract with TRANSCO/Concessionaire or another Qualified Distribution Utility or qualified service provider for the operation of the subject subtransmission asset/s. The contract shall be included in the application for consideration by ERC during the hearing and evaluation of the case.

**Section 2. Financial Capability Criteria** – The financial criteria for qualification shall include but not limited to the following based on the most current audited financial statement:

- a) Current on all financial obligations related to all contracts with suppliers of inputs necessary for the Distribution Utility's provision of electricity service to its End-Users.
- b) Current on all financial obligations related to outstanding debt: Provided, that the ERC may grant exemptions in the case of pending debt restructuring.
- c) A current ratio of not less than 0.70:1 or a quick ratio of not less than 0.50:1. The current ratio shall be calculated as the ratio of the current assets to current liabilities. The quick ratio shall be calculated as the ratio of the current assets less inventory to current liabilities.
- d) A debt ratio of not more than 80%. The debt ratio shall be calculated as the ratio of total liabilities to total assets.
- e) An average collection period of not more than ninety (90) days. The average collection period shall be calculated as the ratio of average receivables to daily sales. The average receivables shall be determined using the average of the receivables at the beginning and end of the year. The daily sales shall be computed by dividing sales by 365 days.
- f) A positive net profit margin and return on assets. The net profit margin shall be calculated as the ratio of net profits after taxes to sales. The net profits after taxes shall be computed as earnings before interest and taxes minus tax (EBIT-Tax). The return on assets shall be computed as the ratio of earnings before interest and taxes minus tax (EBIT-Tax) to the average total assets.

The Distribution Utility may submit other relevant information to be considered by the ERC in determining its financial capability.

A Distribution Utility who fails to meet any of the criteria above-prescribed may, in the alternative, submit to the ERC a letter-guarantee from an entity acceptable to TRANSCO or a written waiver from TRANSCO that it is willing to sell the subject subtransmission asset despite the DU not meeting the prescribed financial criteria.



**Section 3. x x x"**

Article V of the said Guidelines is hereby amended to read as follows:

**"Article V**

**PROCEDURES FOR THE SALE AND TRANSFER  
OF SUBTRANSMISSION ASSETS**

**Section 1. Negotiation of the Sale and Transfer Agreement –** TRANSCO shall negotiate a sale and transfer agreement for assets classified as subtransmission assets based on the criteria established in Article III hereof, to all interested Qualified Distribution Utilities or Qualified Consortium or entities duly authorized by PEZA to operate within the EZs connected to such subtransmission facilities. The Qualified Distribution Utility or Qualified Consortium or entities duly authorized by PEZA to operate within the EZs interested in purchasing subtransmission assets shall negotiate to acquire all subtransmission assets to which they are connected.

In agreeing to the terms of payment for such sale, TRANSCO shall grant concessional financing to Electric Cooperatives (ECs), subject to but not limited to the following conditions:


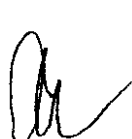
- a) Payment shall be for a maximum period of twenty (20) years but not less than the remaining life of the subject asset;
- b) No down payment shall be required;
- c) Grace period of one year shall be given; and
- d) Interest shall be less than the market rate.

The ECs may source the funds for buying the asset as well as the cost of Right-of-Way (ROW) acquisition from their corresponding reinvestment funds while the cost of operating and maintaining the same shall be sourced from their existing O & M expense accounts.

For Private Utilities (PUs), the cost of buying said asset as well as the cost of ROW acquisition shall be considered in their reset applications under the Rules for Setting Distribution Wheeling Rates (RDWR) or in their applications for rate adjustment filed prior to their entry to the RDWR.

TRANSCO shall provide the Qualified DU or Qualified Consortium or entities authorized by PEZA to operate within EZs with all necessary documents and other information necessary for the operation and maintenance of the facilities such as rights-of-way of the subtransmission lines, land titles of substations, single-line diagrams and as-built drawings. TRANSCO shall also provide the DU with technical and contractual information about end-users directly connected to such asset subject of sale.

TRANSCO and the Qualified DU or Qualified Consortium or entities authorized by PEZA to operate within EZs shall endeavor to enter into a mutually acceptable arrangement on issues regarding right-of-way. Such agreement shall form part of the application.



ROW costs that are incurred or become certain after the signing of the contract of sale shall be borne by the acquiring DU, but said DU may apply for recovery of such costs, to the extent of what are just and reasonable, in its future rate filings and inclusion of such ROWs in its Regulatory Asset Base (RAB).

**Section 2. Asset Valuation** - The subtransmission asset shall be valued as follows:

- a) If the contract was entered into before June 13, 2006, the subtransmission asset shall be valued at the agreed price between the DU and TRANSCO;
- b) If the contract was entered into after June 13, 2006, the subtransmission asset shall be valued in reference to the Sinclair Knight Merz (SKM) valuation or any subsequent valuation as approved by the Commission; and
- c) In the absence of the SKM valuation of certain subtransmission assets for sale, the agreed price between the DU and TRANSCO shall be considered. The DU shall endeavor to enter into an agreement to the advantage of its consumers.

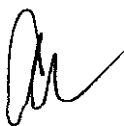
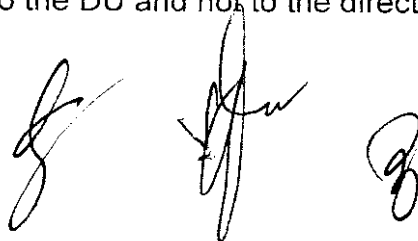
**Section 3.** x x x

**Section 4.** x x x (As amended by Resolution No. 03, Series of 2005)

**Section 5. TRANSCO Rates** – TRANSCO will continue to bill or collect any uncollected connection and residual charges resulting from the one (1) year deferred charges as approved by the ERC. The acquiring DU shall have the following payment options:

1. To pay any uncollected subtransmission charges upon transfer of possession of the subtransmission asset. The amount shall be based on previous year's consumption.
2. To include the uncollected charges in the amortization.
3. To pay any uncollected connection and residual charges for a period of one year from the date the parties execute and implement a Deed of Conditional Sale or Transfer of Possession or similar documents over the sale of the subtransmission asset after the ERC's approval of sale.

If the subject subtransmission asset has a directly connected customer, the DU who acquired the asset shall bill such customer in accordance with Section 6, Article V hereof and any uncollected/unpaid subtransmission charges, if any (prior to the transfer of possession) shall be billed by TRANSCO to the DU who acquired the asset. If the acquired line has a directly connected customer, the acquiring DU shall become the customer of TRANSCO, and any subtransmission charges shall be billed to the DU and not to the directly-connected customer.



TRANSCO will likewise continue to bill the corresponding sub-transmission rates to any entity connected to the subtransmission assets that have not been acquired by a Qualified Distribution Utility or Qualified Consortium or entities duly authorized by PEZA to operate within the EZs.

The subtransmission assets of TRANSCO/Concessionaire which have not been sold or disposed of by December 31, 2010 shall remain as its assets which shall be included in its Regulatory Asset Base (RAB).

**Section 6. Rates for Directly-Connected End-Users** - The rates to be imposed to end-users directly connected to the subject asset shall be the TRANSCO's approved connection and residual charges for a period not exceeding six (6) months from the date the parties execute and implement a Deed of Conditional Sale or Transfer of Possession or similar documents over the sale of the subtransmission asset. Within the said six (6) months period, the DU and the directly connected end-users shall endeavor to come up with a mutually acceptable rate and file said agreement with the ERC for approval, otherwise, the same cannot be charged to the end-user. In case of disagreement, the ERC shall resolve the same. In the event ERC's approval of the said agreement is secured after the six (6) month period, the DU shall continue to charge the approved connection and residual charges until the approval of said agreement by ERC.

**Section 7. Transfer of Operation and Maintenance of Sub-transmission Assets** – Upon approval by the ERC of the Sale and Transfer, TRANSCO shall facilitate the orderly transfer of the operation and maintenance of the subtransmission assets to the DU. In cases wherein the subtransmission line's circuit breaker protection and control remain within TRANSCO's control house, TRANSCO shall continue to operate and maintain the said protection and control upon the DU's request, until such time that the DU has transferred the same to its own control house.

**Section 8. Procedure for Filing with ERC** – Any petition, application or action to be filed herein shall be governed by the ERC Rules of Practice and Procedure, the pertinent provisions of the Act or its IRR and other related laws.

Article VI of the said Guidelines is hereby amended to read as follows:

#### “ARTICLE VI

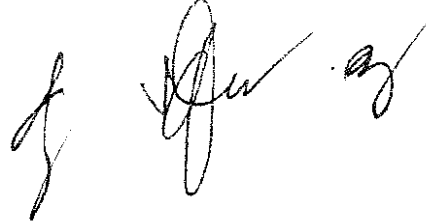
##### APPLICATION BY A QUALIFIED CONSORTIUM FOR FRANCHISE TO OWN AND OPERATE THE SUBTRANSMISSION ASSET

**Section 1. Eligible Applicant** – An application for a franchise shall be filed with the ERC by the Qualified Consortium formed by and composed of two or more DUs intending to own, operate, upgrade and expand one or more subtransmission assets.

**Section 2. Subscription Rights** - The subscription rights of each DU involved shall be proportionate to their load requirements unless otherwise agreed by the parties. Load requirements shall be based on the average demand

recorded for the last twelve (12) months. Any share adjustment in the future shall be in accordance with the organizational framework (i.e. Articles of Incorporation) of the consortium. For subtransmission assets that traversed another DU's franchise area and the said DU has no connected load, the said DU will be given subscription rights in the event that it will connect to the subject subtransmission asset.

**Section 3. Submission of Required Data – x x x .”**

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