



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

**RESOLUTION NO. 02, Series of 2009**

A Resolution Adopting the Rules for Recovery of Costs Associated with the  
"Sale for Resale Agreements" By, Between or Among Distribution Utilities

**WHEREAS**, pursuant to Section 43 (t) of Republic Act No. 9136, the Energy Regulatory Commission (ERC) is mandated to promulgate rules and regulations and perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry;

**WHEREAS**, there is a need to come out with the appropriate Rules to ensure that only the reasonable costs associated with the "Sale for Resale Agreements" entered into by the Distribution Utilities (DUs) are recovered through their rates and to prescribe the regulatory requirements for recovery of these costs;

**WHEREAS**, on May 25, 2008, the ERC conducted a public consultation for the adoption of proposed Rules for the Recovery of Costs Associated with the "Sale for Resale Agreements" By, Between or Among Distribution Utilities;

**NOW THEREFORE**, the ERC, after considering the various views and comments submitted by all interested parties, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT**, the Rules for the Recovery of Costs Associated with the "Sale for Resale Agreements" By, Between or Among Distribution Utilities herein attached as Annex "A" and made an integral part of this Resolution.

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

Pasig City, January 26, 2009.

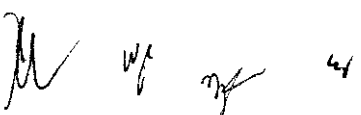
  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

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

  
**JOSE C. REYES**  
Commissioner



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

**RULES FOR THE RECOVERY OF COSTS ASSOCIATED WITH  
THE "SALE FOR RESALE AGREEMENTS" BY, BETWEEN OR  
AMONG DISTRIBUTION UTILITIES**

Pursuant to Sections 23, 25 and 43 (f) of Republic Act No. 9136 or the Act, Rule 7 of its Implementing Rules and Regulations (IRR) and Section 10 of Republic Act No. 7832, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules for the recovery of costs associated with the "sale for resale agreements" by, between or among Distribution Utilities (DUs)

**ARTICLE I  
GENERAL PROVISIONS**

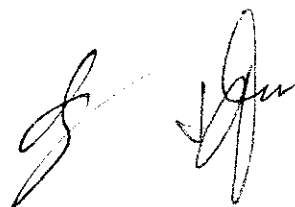
**Section 1. Objectives.** - These Rules shall have the following objectives:

- (a) To ensure that only the reasonable costs associated with the "sale for resale agreements" entered into by the DUs are recovered through their rates; and
- (b) To prescribe the regulatory requirements before such costs associated with these "sale for resale agreements" to be entered into by the DUs can be recovered through the rates.

**Section 2. Scope.** - These Rules shall provide the framework for the recovery of the DUs' costs associated with the "sale for resale agreements" they have entered into by, between or among themselves.

**Section 3. Definition of Terms.** -

- (a) "Act" refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001";
- (b) "Buying DU" refers to the distribution utility that buys power from another DU (the Selling DU) for resale to its customers;
- (c) "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 Act;
- (d) "Energy Regulatory Commission" or "ERC" refers to the regulatory agency created in Section 38 of the Act;



- (e) "End-users" refer to persons or entities requiring the supply and delivery of electricity for its own use;
- (f) "Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rate by Distribution Utilities" or "AGRA/SLR Guidelines" refer to the guidelines issued by the ERC, which prescribe the rules for the automatic adjustments of the DUs' Generation and System Loss Rates;
- (g) "National Power Corporation" or "NPC" refers to the government corporation created under Republic Act No. 6395, as amended;
- (h) "Purchased Power Cost" refers to the sum of the Selling DU's ERC-approved generation rate, transmission rate, system loss rate, Wheeling Rate and other pass-through rates;
- (i) "Sale for Resale Agreements" refer to arrangements or agreements, entered into by, between or among DUs, involving the purchase of power by one DU (Buying DU), from another DU or other DUs (Selling DUs) for resale to the Buying DU's customers or end-users;
- (j) "Selling DU" refers to the distribution utility that sells power to another DU (the Buying DU) for resale to the Buying DU's customers; and
- (k) "Wheeling Rate" refers to the sum of the Selling DU's distribution, supply and metering costs.

**ARTICLE II**  
**SALE FOR RESALE AGREEMENTS EXISTING**  
**AT THE TIME OF THE UNBUNDLING OF THE DUS' RATES**

**Section 1. "Sale for Resale Agreements" Deemed Approved.** - The "sale for resale agreements" wherein the ERC has already considered in its decision on the DU's unbundled rates shall be deemed approved.

**Section 2. Recovery of Costs Associated with Approved "Sale for Resale Agreements."** - The actual costs associated with the approved "sale for resale agreements" shall be recovered in full. For those "sale for resale agreements" which are deemed approved, full recovery shall correspond to the approved "sale for resale" rate of the Selling DU and shall be reckoned from the effectivity of such DU's approved unbundled rates.

**Section 3. Recovery of Differential Cost.** - For the period starting from the effectivity of the Selling DU's unbundled rates up to the effectivity of the AGRA/SLR Guidelines, the Buying DU, which pegged its rates at NPC rates but whose "sale for resale" costs were higher, shall compute such differential cost and apply the same with the ERC for recovery under the Other Generation Adjustments (OGA) variable of the Generation Rate (GR) formula in the AGRA/SLR Guidelines. As for the period after the effectivity of the AGRA/SLR Guidelines, full recovery shall be allowed in the confirmation of the Generation Rates and System Loss Rates that were implemented by the Buying DU.

**Section 4. Unapproved "Sale for Resale Agreements".** - The "sale for resale agreements" existing at the time of the unbundling of the DUs' rates but were not approved by the ERB or the ERC shall be treated as ineligible power supply contracts. Accordingly, recovery of costs associated therewith shall be pegged at the NPC rate or actual cost, whichever is lower. Full recovery shall be allowed only after compliance with Article III hereof and only to the extent as may be approved by the ERC.

**ARTICLE III  
APPROVAL OF EXISTING UNAPPROVED OR NEW  
"SALE FOR RESALE AGREEMENTS" AND  
OF APPLICABLE RATES**

**Section 1. Filing and Approval of Sale for Resale Agreements.** - DUs who have existing unapproved "sale for resale agreements" and those who enter into such agreements after the effectivity of these Rules shall jointly file with the ERC, in accordance with the ERC Rules of Practice and Procedure, an application for approval of their "sale for resale agreements", which shall include: a) the DUs' agreements as to ownership of assets/facilities for the provision of services; b) arrangement with regards to the operation and maintenance of the assets/facilities; c) the billing functions of the parties; and d) the selling rates and the retail rates that the Selling DU and Buying DU, respectively, propose to implement. The ERC's existing requirements under its Rules of Practice and Procedure for the approval of rates and of power supply contracts shall also be observed insofar as they are applicable.


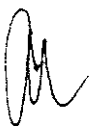
**Section 2. Selling Rates.** - The selling rates which shall be charged to the Buying DU for the supply of power shall be the summation of the generation, transmission and allowable system loss rates, the Wheeling Rate and other pass-through charges approved by the Commission. The Wheeling Rate shall be composed of the distribution, supply, metering costs of the Selling DU. The application shall include the calculations and supporting documents that will validate the basis of the proposed selling rates.

**Section 3. Retail Rates.** - The retail rates, which the Buying DU shall impose upon its customers in the area/s served or to be served under the "sale for resale agreements", shall consist of the costs for purchased power, allowable system loss, distribution, supply and metering for electric service, and other pass-through charges approved by the Commission.

The selling rates imposed upon the Buying DU shall be recoverable and, for this purpose, shall be included in its allowable generation charge imposable on its customers in the area/s served or to be served under the "sale for resale agreement".

**Section 4. Imposition of Universal Charges and Lifeline Rates.** - Universal Charges and Lifeline Rates shall not be included in the selling rates to be imposed on the buying DUs since these are charges imposable only on electricity end-users and the buying DUs cannot be treated as such.

Hence, on matters referring to Universal Charges, the Selling DUs shall make the necessary representations to the Power Sector Assets and Liabilities Management



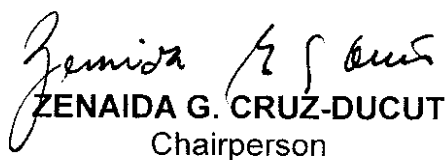
Corporation (PSALM) of their "sale for resale" transactions that are exempted from such charges.

**ARTICLE IV  
FINAL PROVISIONS**

**Section 1. Separability Clause.** – If, for any reason, any part or 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.

**Section 2. Effectivity.** - These Rules shall take effect on the fifteenth (15<sup>th</sup>) day following the publication in a newspaper of nationwide circulation.

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

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
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