

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



RESOLUTION NO. 03, Series of 2010

RULES FOR THE REGISTRATION OF WHOLESALE AGGREGATORS, AS AMENDED

WHEREAS, the mandate of the Energy Regulatory Commission (ERC) under Republic Act No. 9136 is to promote free and fair competition and to ensure the accountability of electric power industry participants;

WHEREAS, the ERC has recognized the need to provide supply options for Distribution Utilities, specifically small electric cooperatives;

WHEREAS, pursuant thereto, on 22 May 2006, the ERC has adopted the following Rules for the Registration of Wholesale Aggregators (the "Rules");

WHEREAS, it has become necessary to clarify the specific documentary requirements to be submitted to facilitate the evaluation of said applications;

WHEREAS, from November 24, 2009 to January 06, 2010, the proposed amendments to the Rules were posted on the ERC website to solicit comments from the industry participants;

WHEREAS, after a careful consideration of the comments submitted by interested parties including the promulgation of subsequent laws affecting the implementation thereof, the ERC deems it appropriate to amend the above stated Rules and adopt the Rules for the Registration of Wholesale Aggregators, as Amended, attached hereto as Annex "A" and made an integral part hereof;

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT**, the "Rules for the Registration of Wholesale Aggregators, As Amended."

These Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation.

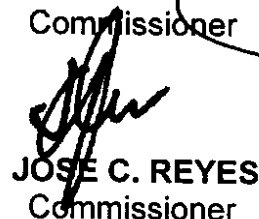
Pasig City, February 15, 2010.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner


15/2/10

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

**RULES FOR THE REGISTRATION OF
WHOLESALE AGGREGATORS, AS AMENDED**

ERC CASE NO. 2009 - 014 RM

Pursuant to Section 30 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations, the Philippine Grid Code, Philippine Distribution Code, and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates the following Rules for the Registration of qualified Wholesale Aggregators;

ARTICLE I

GENERAL PROVISIONS

Section 1. Objectives

The following are the objectives of these Rules:

- a. To promote free and fair competition and accountability of Electric Power Industry Participants;
- b. To provide supply options for Distribution Utilities, specifically small electric cooperatives;
- c. To provide for the qualifications of a Wholesale Aggregator and the requirements and procedures for registration with the ERC; and
- d. To establish the obligations of a Wholesale Aggregator.

Section 2. Guiding Principles

Section 30 of the Act empowers the ERC to authorize other similar entities to become eligible as members, either directly or indirectly, of the WESM. These entities authorized by the ERC shall be bound by the WESM Rules with respect to their transactions in the market.

Hence, no Person, other than a Generation Company, shall implement any contract for the sale of electricity to Distribution Utilities without having registered with the ERC as a Wholesale Aggregator.

Section 3. Registration

The ERC shall issue a Certificate of Registration to a qualified Wholesale Aggregator to become a member of the WESM and to comply with all applicable requirements stipulated herein.

Section 4. Scope

This set of Rules shall apply to any Person intending to become a Wholesale Aggregator consistent with the Act and its Implementing Rules and Regulations.

Section 5. Definition of Terms.

Act	Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001";
Applicant	A Person or entity seeking to obtain a Certificate of Registration to become a Wholesale Aggregator;
Certificate of Registration	The certificate granted by the ERC to any Person or entity authorized to act as a Wholesale Aggregator;
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;
Distribution Utility	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 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 (with Distribution Utilities) and for purposes of these Rules only, shall be considered Distribution Utilities;
Generation Company	Any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

National Grid Corporation of the Philippines (NGCP)	The corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the Act and Republic Act No. 9511.
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.
Wholesale Electricity Spot Market (WESM)	The Wholesale Electricity Spot Market established pursuant to Section 30 of the Act;
Wholesale Aggregator	Any Person or entity, other than a Generation Company, issued a Certificate of Registration by the ERC to sell electricity to Distribution Utilities;
Wholesale Aggregation Contract	The contract entered into by a Wholesale Aggregator with Distribution Utilities.

Terms, not otherwise defined herein, which are defined in the Act or its Implementing Rules and Regulation (IRR) shall have the meaning ascribed to them in the Act or its IRR (as *the case may be*).

ARTICLE II

QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A WHOLESALE AGGREGATOR

Section 1. Any natural or juridical person, other than a Generation Company, duly organized to engage in the wholesale aggregation business may register as a Wholesale Aggregator.

Section 2. Upon registration with the ERC, the Applicant must demonstrate that it has the personnel and business structure in place necessary to manage and operate its wholesale aggregation business.

Section 3. Ownership Limitation and Restrictions.

a. A Wholesale Aggregator 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 NGCP. Provided, that the cross-ownership prohibition under this provision shall not apply to a relative by blood or marriage, if such relative of any stockholder, director or officer of the TRANSCO or NGCP has no employment, consultancy, fiduciary, contractual, commercial, or other economic relationship or interest in the Generation Company, Distribution Utility or Supplier, or conversely, if such relative of any stockholder, director or officer of a Generation Company, Distribution Utility or Supplier has no employment, consultancy, fiduciary, contractual, commercial or other economic relationship or interest in the Generation Company, Distribution Utility or Supplier: Provided, further, that this prohibition on cross-ownership shall not apply to: (a) ownership of shares of stock in a company listed in the Philippine Stock Exchange (PSE) even if such listed company is a Generation Company, Distribution Utility or Supplier, if such share ownership is not more than one per centum (1%) of the total outstanding shares of such listed Generation Company, Distribution Utility or Supplier; or (b) ownership of shares of stock which is not more than one per centum (1%) in a company listed in the PSE which owns or controls shares of stock in the TRANSCO or NGCP: Provided, moreover, that such owner of shares of stock in the listed corporate stockholder of the TRANSCO or NGCP shall not own more than one per centum (1%) of the shares of stock or equity interest in any Generation Company, Distribution Utility or Supplier.

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 a wholesale Aggregator or an officer, director or stockholder of any Wholesale Aggregator.

ARTICLE III

REQUIREMENTS AND PROCEDURES

Section 1. The Applicant shall register with the ERC prior to implementing its Wholesale Aggregation Contract. Provided all the requirements shall have been complied with, the ERC shall approve or reject an application within thirty (30) working days from the date of application unless ERC shall have required the submission of additional information, or ordered on reasonable grounds, the postponement of final action on an application. A Certificate of Registration shall be issued upon approval of an application.

Section 2. 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) or Business Name Registration Certificate (for single proprietorship);

- b. All applicable contracts already signed and executed in relation to the wholesale aggregation business, if any;
- c. List of affiliates engaged in the generation, distribution and retail supply of electricity, and their corresponding business addresses, if any;
- d. List of shareholders and their shareholdings, directors and officers, including curriculum vitae, if any;
- e. Duly accomplished Application Form for registration (*copy available for downloading at the ERC website or can be secured at the Spot Market Division*)
- f. Five-year Business Plan indicating the following:
 - a. Market Share and Revenue Target(s);
 - b. Type/s of Market to be Served;
 - c. Target Market Areas;
 - d. Marketing Strategies; and
 - e. Supply Services to be offered;
- g. Sworn Statement or Undertaking to comply with the Obligations of a Wholesale Aggregator; and
- h. Sworn Statement that the Applicant complies with the restrictions/limitations on ownership as provided for under Article II, Section 3 of the Rules.

Section 3. An Applicant shall incorporate in its Wholesale Aggregator Contracts provisions for the protection of Distribution Utilities against fraud, gross negligence, bad faith or malicious intent. An Applicant shall incorporate in its Wholesale Aggregator Contracts provisions for the protection of Distribution Utilities against fraud, gross negligence, bad faith or malicious intent. An Applicant shall be required to provide and maintain a security deposit based on its one (1) month projected energy sales under an escrow account subject to the terms and conditions acceptable to the ERC. The security deposit may be in form of either cash or any applicable bank guaranty issued by any commercial bank. Initially, the one (1) month total projected energy sales will set the required security deposit and shall be updated every June and December each year, in which case, will be set to the highest actual monthly energy sales occurring during the previous six (6) month period. The Applicant shall submit to the ERC a certification from any universal commercial bank stating the amount deposited in escrow. An Applicant shall also incorporate in its Wholesale Aggregator Contracts provisions on the establishment as well as drawdown of such security deposit.

Section 4. In case of renewal of registration, the Wholesale Aggregators shall submit the following requirements:

- a. Duly accomplished Application Form for Renewal of registration (*copy available for downloading at the ERC website or can be secured at the Spot Market Division*);

- b. Recent annual report to shareholders together with Audited Financial Statements; and
- c. Such other information or documents that ERC may require.

Section 5. Failure to submit the additional requirements to the ERC within sixty (60) calendar days from receipt of written notification from the ERC shall be a ground for denial of the application or renewal of registration.

Section 6. All submissions shall be certified under oath by the Applicant or its duly authorized officer, in case of a juridical person.

Section 7. All contracts entered into by Distribution Utilities with the Wholesale Aggregators shall be considered as bilateral power supply contracts subject to review and approval by the ERC pursuant to Section 45 (b) of the Act. All bilateral power supply contracts shall not be implemented unless approved by the Commission.

The recovery of the cost of power purchased by the Distribution Utilities shall be governed by the Guidelines for the Recovery of Costs for Generation Component of the Distribution Utilities' Rates.

Any amendment to the previously filed contracts or agreements shall be subject to the approval of the Commission. Any new contracts containing additional stipulations apart from those included in the original contract or agreement shall likewise be subject to the approval of the ERC.

ARTICLE IV

PAYMENT OF FEES

The Applicant shall pay the registration fee in the amount of Ten Thousand Pesos (PhP10,000.00) upon the filing of its application or renewal of registration.

ARTICLE V

TERM OF CERTIFICATE OF REGISTRATION

The Certificate of Registration issued by the ERC shall have a term of five (5) years, renewable at the end of every term. The registration shall be non-transferable and shall be valid for the stated term unless otherwise revoked by the ERC. A Wholesale Aggregator shall apply for the renewal of registration not later than sixty (60) days before the expiration of its Certificate of Registration. The ERC shall issue the renewed registration within thirty (30) days upon receipt of the documents required. The term of the renewed Certificate of Registration shall commence immediately after the end of the preceding term of registration.

ARTICLE VI

REPORTORIAL REQUIREMENTS

Section 1. Information. Each Wholesale Aggregator shall file a report every end of June and December each year, or any other report as may be deemed necessary by the ERC containing the following information, in a form prescribed by the ERC:

- a. Monthly energy sales to its Distribution Utilities;
- b. Monthly revenues from energy sales to its Distribution Utilities;
- c. Any new contracts signed and executed as well as any amendments relating to rates and contract quantities to the previously filed contracts or agreements, in relation to its wholesale aggregation business;
- d. Certification from any universal commercial bank stating the updated amount deposited in escrow referred to in Article III, Section 3 hereof; and
- e. Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

ARTICLE VII

OBLIGATIONS OF WHOLESAL AGGREGATORS

Section 1. A Wholesale Aggregator who is also engaged in the generation and distribution businesses shall ensure that its wholesale aggregation business activities are functionally and structurally unbundled from its generation and distribution businesses, as provided for in Rule 10 of the IRR of the Act on the Structural and Functional Unbundling of Electric Power Industry Participants. In said unbundling, the Wholesale Aggregator shall ensure that there is no cross subsidization between and among its power supply business activities, in accordance with the ERC-approved Business Separation and Unbundling Plan.

Section 2. A Wholesale Aggregator shall comply with the provisions of the Act and its Implementing Rules and Regulations, the applicable provisions of the Philippine Grid Code, Philippine Distribution Code, the Open Access Transmission Service (OATS) and Distribution Services and Open Access Rules (DSOAR), the Competition Rules and all applicable rules and regulations prescribed by ERC, including the reportorial requirements prescribed in these Rules.

Section 3. A Wholesale Aggregator shall register and comply with the requirements and procedures set under the WESM and shall comply with the WESM Rules and all relevant manuals, policies and guidelines.

Section 4. A Wholesale Aggregator shall inform the ERC of any material change in the information supplied in its application for registration within thirty (30) days from the occurrence of such event.

Section 5. A Wholesale Aggregator that intends to cease operations shall notify the ERC and the Distribution Utilities it has contracted with, at least sixty (60) days prior to ceasing operations. A Wholesale Aggregator shall likewise submit a settlement plan or proof of payment of any amount owed to the Market Operator, Generation Companies, Distribution Utilities or any other entities which the Wholesale Aggregator has contracted with relative to its wholesale aggregation business. The security deposit under Section 3, Article III hereof shall account for purchases of the Distribution Utilities from other sources resulting from the cessation of its operations until such time that the amount of deposit has been fully exhausted or the affected Distribution Utility has entered into a new contract with another party, whichever comes earlier. Thereafter, the Certificate of Registration shall be deemed cancelled.

ARTICLE VIII

SANCTIONS

The ERC shall impose the appropriate fines and penalties, including the suspension or revocation of the Certificate of Registration, for any violation or non-compliance with these Rules, pursuant to the "A Resolution Amending the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136".

ARTICLE IX

SEPARABILITY

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

ARTICLE X

EFFECTIVITY

These Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation.

Pasig City, February 15, 2010.


ZENAIDA G. CRUZ-DUCUT
Chairperson *gnat*


RAUF A. TAN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


JOSE C. REYES
Commissioner



Republic of the Philippines
ENERGY REGULATORY COMMISSION
 12/F Pacific Center Building, San Miguel Avenue,
 Ortigas Center, Pasig City
 Tel. Nos. 633-3253 / 914-5000 loc. 145 & 148

APPLICATION FOR REGISTRATION OF WHOLESALE AGGREGATORS

Do Not Fill-Up! (For ERC-SMD use only)

Date Received : _____

Received By : _____

Application No : _____

Date Paid : _____

Do Not Fill-Up! (For ERC-SMD use only)
(Fill all appropriate boxes with a "✓")
Note: Only applications with complete documents shall be received and processed.

Paid Application Fee (10,000 PHP): Yes No

Confirmed By: (ERC-SMD Authorized Staff): _____

(Please write legibly. Fill all appropriate boxes with a "✓" and put N/A to items Not Applicable to the applicant)

I. INFORMATION ON THE APPLICANT:

1. Name of Applicant : _____

2. Legal / Business Name : _____

3. Type of Business Organization:

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Single Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Cooperative |

5. Registration:

- DTI SEC CDA Others

Registration / Reference / Certificate Number: _____

Date Issued: _____

6. Complete Business / Office Address:

7. Telephone Number(s) : _____

8. Fax Number(s) : _____

9. Website (If Available) : _____

10. E-mail Address (If Available) : _____

11. Authorized Representative to ERC:

Name : _____
 Designation : _____
 Tel. No.(s) : _____
 Fax. No.(s) : _____
 Cell. No.(s) : _____

12. Nature of Electricity Sector Business Activity:

- Newly organized for the purpose of being a Wholesale Aggregator.
 Existing organization engaged in an activity in the electricity sector.
 (Specify existing business activity)

II. COMPANY / CORPORATE INFORMATION:

1. Board of Directors

	Name	Citizenship	Designation
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

***Please use separate sheet(s) if necessary.

2. Corporate and other Senior Officers

	Name	Citizenship	Designation
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

9.		
10.		
11.		
12.		
13.		
14.		
15.		

***Please use separate sheet(s) if necessary.

3. List and description of Companies affiliated with the Applicant engaged in the Electric Power Industry:

Name of Company	Business Address	Description of the Relationship with the Applicant (i.e., Subsidiary)	Business description and activities in which affiliate is engaged with (i.e., Generation)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

***Please use separate sheet(s) if necessary.

III. PROOF OF FINANCIAL SUSTAINABILITY & VIABILITY REQUIREMENTS:

1. Record of Stockholders

	Name	Citizenship	Class of Stocks	Number of Shares Owned
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

2. Latest Financial Profile

	No. of Shares	Par / Stated Value	Amount (Php)
Authorized Capital Stocks			
Total Subscribed Capital			
Total Paid-Up Capital			

3. Capital Sources

Equity

Borrowings

(Please specify sources: _____

Others (Please specify and use additional sheets if necessary)

IV. OTHER REQUIREMENTS:

(Put a "✓" on the box, if and only if attached with this Application Form)

- Articles of Incorporation / Partnership with Certificate of Registration (for juridical person) or Business Name Registration Certificate (for Single Proprietorship)**
 - All applicable contracts already signed and finalized by the Applicant in relation to wholesale power supply business, if any**
 - Curriculum Vitae compilation of the Applicant's Board of Directors, Officers and Shareholders.**
 - Certification issued by any Universal Commercial Bank, stating among others the amount deposited / established by the applicant in an escrow account**
 - Five (5) Year Business Plan**
 - Sworn Statement or Undertaking to Comply with the Obligations of a Wholesale Aggregator**
 - Sworn Statement that the Applicant complies with the restrictions/limitations on ownership as provided for under Article II, Section 3 of the Rules**
 - Sworn Statement of Verification and Certification**
-

Name of person who provided the above information

: _____

Signature

: _____

Date Accomplished

: _____

Designation

: _____

VERIFICATION AND CERTIFICATION

REPUBLIC OF THE PHILIPPINES)

) S.S.

I, (name of applicant/or authorized signing officer), of legal age, with office address at _____, after having been sworn to in accordance with law, hereby depose and say:

That I am the (designation) of the (name of the company);

I swear or affirm that I have personal knowledge of the facts stated in the attached application, that I am competent to testify to them, and that I have the authority to submit this application for on behalf of the applying party.

I further swear or affirm that all statements made in the application form are true, correct and complete and that any substantial changes in such information will be provided to the Energy Regulatory Commission in a timely manner.

I swear or affirm that the applying party understands and will comply with all requirements of the applicable law and rules, including any required submission of additional information by sworn affidavit prior to the provision of electric service.

Signature of Authorized Representative

Printed Name

Name of Applicant

SUBSCRIBED AND SWORN to before me this ___ day of _____.

Notary Public