



RESOLUTION NO. 05, Series of 2009

**RESOLUTION ADOPTING THE RULES TO GOVERN
THE IMPLEMENTATION OF THE TIME OF USE (TOU) RETAIL
RATES OF DISTRIBUTION UTILITIES (DUS) PURCHASING THEIR
POWER REQUIREMENTS FROM VARIOUS SOURCES**

WHEREAS, Section 43 (f) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), and its Implementing Rules and Regulations (IRR), provide that the Energy Regulatory Commission (ERC) shall determine, fix and approve, among others, the retail rates to be imposed by Distribution Utilities (DUs) through an established and enforced methodologies;

WHEREAS, on April 13, 2005, the Commission issued a Decision in ERC Case No. 2004-178 [In the Matter of the Application for the Approval of the Proposed Generation Rates for Luzon, Visayas and Mindanao Grids, with Prayer for Provisional Authority, National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) – Applicants] approving the Time of Use (TOU) retail rates of the applicants and directing all DUs to file their respective proposed TOU retail rates applications;

WHEREAS, on various dates, the DUs filed their respective TOU retail rates applications;

WHEREAS, to facilitate the evaluation and resolution of the said applications, the Commission formulated a draft "Rules to Govern the Implementation of the Time of Use (TOU) Retail Rates of Distribution Utilities (DUs) Purchasing Their Power Requirements From Various Sources", which was subjected to a public consultation on October 8, 2008;

WHEREAS, after a thorough evaluation of the comments and views submitted by the participants, the Commission deems it necessary to formulate and adopt a set of rules that would govern the implementation of the TOU retail rates of DUs purchasing their power requirements from various sources;

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Rules to Govern the Implementation of the Time of Use (TOU) Retail Rates of Distribution Utilities (DUs) Purchasing Their Power Requirements From Various Sources

NOW, THEREFORE, be it RESOLVED, as the Commission hereby RESOLVES to ADOPT the "Rules to Govern the Implementation of the Time of Use (TOU) Retail Rates of Distribution Utilities (DUs) Purchasing Their Power Requirements From Various Sources".

This Resolution shall take effect immediately following its publication in a newspaper of general circulation in the Philippines.

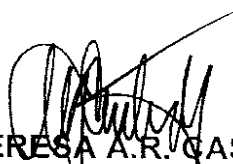
Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all Distribution Utilities (DUs).


Pasig City, February 23, 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 TO GOVERN THE IMPLEMENTATION OF THE
TIME OF USE (TOU) RETAIL RATES OF DISTRIBUTION UTILITIES (DUS)
PURCHASING THEIR POWER REQUIREMENTS FROM VARIOUS SOURCES**

Pursuant to Section 43 (f) of Republic Act No. 9136, Rule 3, Section 4 of its Implementing Rules and Regulations (IRR) and the Distribution Services and Open Access Rules (DSOAR), the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules to implement the Time of Use (TOU) retail rates of Distribution Utilities (DUs) purchasing their power requirements from various sources.

ARTICLE I


GENERAL PROVISIONS

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

- a) To provide DUs not covered by ERC Resolution No. 1, Series of 2008 with a uniform process of implementing their TOU retail rates to their customers;
- b) To ensure recovery of allowable Generation Costs and other costs associated therewith;
- c) To ensure and maintain the quality, reliability, security and affordability of the supply of electric power;
- d) To ensure transparent and reasonable prices of electric power service in a regime of free and fair competition and to achieve greater operational and economic efficiency; and
- e) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

Section 2. Scope. These Rules shall apply to DUs purchasing their power requirements from various sources except those with ERC approved TOU rates and those covered by ERC Resolution No.1, Series of 2008.

DUs that have already filed their applications for TOU retail rates and agreed to be covered by these Rules shall file a manifestation informing the ERC of such intention, within fifteen (15) days from effectivity of these Rules.



Section 3. Definition of Terms – As used in these Rules, the following terms shall have the following respective meanings:

Act - unless otherwise stated, refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001";

AGRA Rules - refer to the Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities under ERC Case No. 2004-322, or any amendments thereto;

Customer – refers to any person or entity requiring the supply and delivery of electricity for its own use;

Distribution Utility or DU - refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has exclusive franchise to operate a distribution system in accordance with its franchise and the Act;

DSOAR - refers to the Distribution Services and Open Access Rules as promulgated by the ERC on January 18, 2006;

Energy Regulatory Commission or ERC - refers to the regulatory agency created under Section 38 of the Act;

ERC Rules of Practice and Procedures - refer to the Rules promulgated by the ERC on June 22, 2006 governing proceedings before it;

Generation Cost - refers to the cost associated with purchased power including only those costs that are reasonable, prudently incurred, and are eligible for recovery in accordance with the established policies of the ERC. This include purchases from TSC, supply contracts, WESM purchases, and distribution utility-owned generation facility, if such facility runs on a more or less continuous basis to meet the normal power demand of the DU's system as determined by the ERC;

Generation Rate - refers to purchased power in PhP/kWh which shall be passed on to the DUs' customers;

Ineligible Supply Contracts - refer to power supply agreements entered into by the DUs with the IPPs or other DUs which were not approved by the then Energy Regulatory Board (ERB) or by the ERC;

Holidays – refer to Regular and Special Holidays stated in Republic Act No. 9492, "An Act Rationalizing the Celebration of National Holidays;"

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

System Loss - refers to the difference between kilowatt-hour (kWh) purchased and/or generated and kWh sold by a DU expressed as a percentage of kWh purchased and/or generated;

The generation cost and corresponding purchases to be utilized in the determination of TOU rates for each of the following consumption periods shall be as follows:

	Months Covered	Days Covered	Generation Cost (GC)/ Total Purchases (TP)
DUs in Luzon and Mindanao	January to June	Mondays to Saturdays	Average hourly generation cost and corresponding purchases of all Mondays, Tuesdays, Wednesdays, Thursdays, Fridays & Saturdays for the months of January to June of the immediately preceding calendar year.
		Sundays and Holidays	Average hourly generation cost and corresponding purchases of all Sundays & Holidays for the months of January to June of the immediately preceding year.
	July to December	Mondays to Saturdays	Average hourly generation cost and corresponding purchases of all Mondays, Tuesdays, Wednesdays, Thursdays, Fridays & Saturdays for the months of July to December of the immediately preceding year.
		Sundays and Holidays	Average hourly generation cost and corresponding purchases of all Sundays & Holidays for the months of July to December of the immediately preceding year.
DUs in Visayas	January to December	Mondays to Saturdays	Average hourly generation cost and corresponding purchases of all Mondays, Tuesdays, Wednesdays, Thursdays, Fridays & Saturdays for the months of January to December of the immediately preceding year.
		Sundays and Holidays	Average hourly generation cost and corresponding purchases of all Sundays & Holidays for the months of January to December of the immediately preceding year.

Generation costs pertaining to Ineligible Supply Contracts shall be pegged at the NPC's Time-Of-Use (TOU) rate, Transition Supply Contract rates or the Average Transition Supply Contract rate, as may be applicable, or the actual rate as billed by the IPP, whichever is lower.

Over or under recoveries resulting from the movement in the generation cost of the DUs shall be determined in accordance with the AGRA Rules and any amendments thereto.

ARTICLE III

OFFER OF TOU RATES TO CUSTOMERS

Section 1. Offer of TOU Rates - DUs covered by these Rules shall offer to their customers the TOU Rates on the next billing month following the approval of their proposed TOU rates. Availment of said TOU rate shall be on a voluntary basis on the part of the customers.

Section 2. Consumer Education and Orientation – The DUs shall conduct consumer education programs to inform their customers of the benefits and/or disadvantages of the TOU rate.

Prior to entering into a TOU contract, the DUs shall likewise conduct a consumer orientation to explain the nature and the provisions of the TOU contract.

Section 3. Incremental Supply and Metering Charge – The DUs shall charge incremental supply and metering charges equivalent to 10% of their existing ERC-approved PhP/customer/month supply and metering rates plus PhP0.01/kWh to all customers who avail of the TOU rates. This additional charge shall cover the incremental costs related to system enhancement and additional meter reading and other operating costs. However, DUs should neither earn additional profit nor incur losses out of these charges. The DUs shall submit to ERC at the end of each year a schedule of its actual Supply and Metering charges/revenues from TOU customers together with the report on the additional investment/asset acquisitions and operating cost incidental to serving TOU customers for verification purposes.

The DUs may file before the ERC their new supply and metering charges for the TOU customers in accordance with Section 4 (e), Rule 3 of the IRR of the Act, Rule 6 of the ERC Rules of Practice and Procedure and Article IV of these Rules. The incremental supply and metering charges shall be effective until a new supply and metering charges are approved by the ERC.

Additional investments/asset acquisitions and operating costs incidental to serving TOU customers should be separately recorded/accounted by the DUs.

Section 4. Metering Equipment and its accessories – The customer shall bear the costs of the metering equipment and its accessories. Such customer may ask the DUs to provide for the required metering equipment and its accessories including the cost of installation, subject to the terms of payment agreed upon between them.

The customer may opt to purchase his own metering equipment and its accessories provided they meet the specifications required by the DU and in accordance with the provisions of Articles 2.11 and Article 4.5.2 of the DSOAR.

Expenses for the replacement of TOU meters shall be borne by the customer unless the damage was caused by the DU.

Section 5. System Loss Charge - The existing manner of calculating the system loss charge shall still be applicable notwithstanding the effectivity of these Rules. All customers, whether TOU or non-TOU, that fall within the same customer classification shall be charged the same system loss charge.

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Section 6. Change in Customer Status – In the event that the customer, who opted to avail of the TOU rates, intends to revert back to a non-TOU customer status, he shall give notice to the DU one (1) month before the termination of the TOU arrangement. The DU, for its part, shall within seven (7) days from receipt of such notice, furnish the customer a statement of all his outstanding payables related to the acquisition, other incidental costs and data management system pertaining to metering equipment and its accessories, unpaid electricity bills and other fees deemed to be necessary.

Failure of the customer to settle his outstanding balance on or before the following billing month after receipt of the notice for intention to revert back to a non-TOU customer status may be a ground for the disconnection of service. However, the DU and the customer may agree on a specific payment scheme for the settlement of such outstanding balance to avoid disconnection while payment is being made.

The ownership of the metering equipment including its accessories is with the customer, provided that the customer has no outstanding obligations with the DU; provided however that such customer-owned meters shall still be subject to the periodic testing and inspection by the DUs pursuant to the provisions of the DSOAR.

ARTICLE IV

REPORTORIAL REQUIREMENTS

Section 1. Prior Verification of the Proposed TOU Rates - The DUs shall, prior to their implementation, submit to ERC their calculation/s with supporting documents within sixty (60) days from the effectivity of these Rules for verification purposes. Thereafter, the ERC shall issue an Order establishing the TOU retail rates to be implemented by the DUs.

Section 2. Data Requirement - The following are the requirements to be submitted to support the application:

- 2.1. For the calculation of the proposed TOU rates, which shall be based on data of the immediately preceeding year:
 - 2.1.1. Average daily load curve;
 - 2.1.2. Schedule of contracted demand/ERC approved rates per supplier;
 - 2.1.3. Schedule of average power deliveries/purchases and corresponding generation cost per supplier for each of the consumption period to support TOU rate calculation in Article II Section 2;
 - 2.1.4. Soft copy of all calculations;
 - 2.1.5. Copy of ads or campaign materials; and
 - 2.1.6. Other data deemed necessary by the Commission.
- 2.2. For a different incremental supply and metering charge other than the 10% plus PhP0.01/kWh set in Article III, Section 3 hereof:

- 2.2.1. Data (time and motion studies) on the activity of the office and the time required by specific personnel to complete each task;
- 2.2.2. Data (plantilla position or contract service) on the salary rate of personnel and service contractor involved in the process;
- 2.2.3. Data on materials, equipment cost and overhead rates;
- 2.2.4. Soft copy of all calculations and rate derivations; and
- 2.2.5. Other data deemed necessary by the Commission.

ARTICLE V

FINES AND PENALTIES

Violation of any provisions of these Rules shall be subject to the imposition of fines and penalties in accordance with the "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of the Act" promulgated by the ERC on May 17, 2002, as amended by Resolution No. 03, Series of 2009 entitled "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" dated February 23, 2009.

ARTICLE VI

EXCEPTION

Where good cause appears, the ERC may allow an exception from any provisions of these Rules, if such exception is found to be in the public interest and is not contrary to the law or any other related rules and regulations.

ARTICLE VII

SEPARABILITY CLAUSE

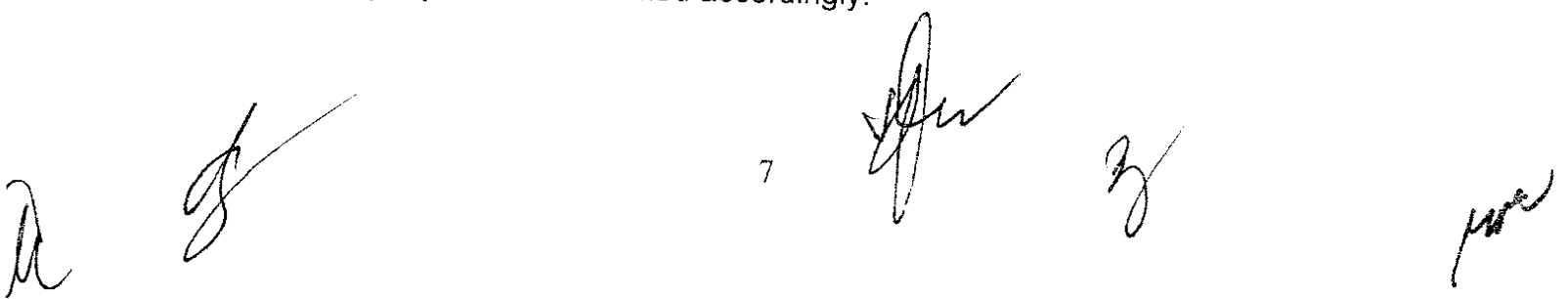
If for any reason, any part or section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

ARTICLE VIII

REPEALING CLAUSE

All rules and guidelines, or portions thereof, issued by the ERC, inconsistent with these Rules are hereby repealed or modified accordingly.

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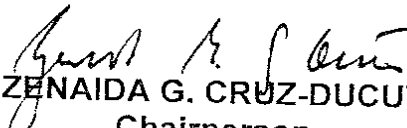
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ARTICLE IX

EFFECTIVITY

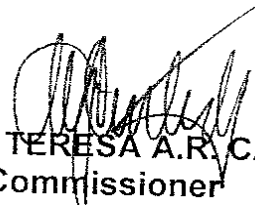
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Pasig City, February 23, 2009.


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