



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

GUIDELINES TO GOVERN THE SETTING OF STANDARDS TO DISTINGUISH THE TRANSMISSION FROM THE SUBTRANSMISSION ASSETS OF TRANSCO AND THE BUYER OR CONCESSIONAIRE OF SAID ASSETS AND THE GRANT OF FRANCHISE TO OPERATE THE SUBTRANSMISSION ASSETS

Pursuant to Sections 7 and 8 of Republic Act No. 9136 or the Act and Rule 6 of the Implementing Rules and Regulations (IRR) of the Act, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these guidelines to:

- a) Set the standards to distinguish the National Transmission Corporation's (TRANSCO's) transmission assets from its subtransmission assets;
- b) Establish an approval process prior to the final sale and transfer of subtransmission assets to distribution utilities; and
- c) Govern the granting of franchise to the consortium or juridical entity to operate the subtransmission assets.

ARTICLE I

GENERAL PROVISIONS

These Guidelines shall have the following objectives:

- a) To ensure the continued quality, reliability, security and affordability of electric service to end users;
- b) To ensure the transparent and reasonable prices of electric service in a regime of free and fair competition and to achieve greater operational and economic efficiency;

- c) To enhance the inflow of private capital and broaden the ownership base of the electric power transmission sector;
- d) To provide for the orderly and transparent privatization of the transmission assets and subtransmission assets of the TRANSCO; and
- e) To provide for the orderly and transparent privatization of certain assets of the TRANSCO or its Buyer or Concessionaire to qualified electric distribution utilities.

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 Consortium of Distribution Utilities 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.

These Guidelines shall not apply to the assets owned by entities other than the TRANSCO or its Buyer or Concessionaire.

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

- a) "*Act*" unless otherwise stated, shall refer to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ;
- b) "*Buyer or Concessionaire*" shall refer to the qualified party awarded the sale agreement or concession contract for the transmission assets;

- c) *“Consortium”* shall refer to the juridical entity formed by and composed of two or more Distribution Utilities each of whom is connected to one or more Subtransmission Assets in common with one or more other Distribution Utilities;
- d) *“Directly Connected Generators”* shall refer to those generating facilities that normally supply electricity to the Grid and where electricity normally flows from the generator to the Grid. For purposes of these Guidelines, Generators which may supply electricity to the Grid only in cases of emergency shall not be considered Directly Connected Generators;
- e) *“Distribution Utility”* shall refer 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;
- f) *“End-User”* shall refer to any person or entity requiring the supply and delivery of electricity for its own use;
- g) *“Energy Regulatory Commission” or “ERC”* shall refer to the regulatory agency created by Section 38 of the Act;
- h) *“Franchised Consortium”* shall refer to a Qualified Consortium that has been granted a franchise to own, operate, maintain, expand and/or upgrade one or more Subtransmission Assets;
- i) *“Grid”* shall refer to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the Act;
- j) *“National Transmission Corporation” or “TRANSCO”* shall refer to the corporation organized pursuant to the Act to acquire all the transmission assets of the National Power Corporation (NPC);
- k) *“Qualified Consortium”* shall refer to a Consortium of Distribution Utilities whose combined qualifications meet the technical and financial criteria established in Article IV hereof;
- l) *“Qualified Distribution Utility”* shall refer to a Distribution Utility that is technically and financially capable of owning, operating, maintaining, upgrading and expanding subtransmission facilities in accordance with the requirement of the Act;

- m) *“Subtransmission Assets”* shall refer to assets classified as Subtransmission Assets based on functional standards established in Article III hereof, including but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land where such facilities/equipment are located. These include NPC assets linking the transmission system and the Distribution System, which are neither classified as generation nor transmission; and

- n) *“Transmission Assets”* shall refer to the grid-wide electrical infrastructure through which electricity flows in large quantities between a few concentrated electricity production centers and the many more dispersed load centers. Transmission assets are typically characterized as long distance lines, high capacity switching and transformation stations, high degree of meshing of lines, stations that provide path diversity, and sophisticated protection schemes that ensure security against grid-wide disturbances.

ARTICLE III

ESTABLISHMENT OF TRANSMISSION VOLTAGE, TECHNICAL AND FUNCTIONAL CRITERIA TO DISTINGUISH TRANSMISSION ASSETS FROM SUBTRANSMISSION ASSETS

Section 1. Transmission Voltage - The transmission voltage level shall be determined on an asset specific basis following the appropriate application of the technical and functional criteria specified in the Section 2 that follows. The voltage level boundaries found in Section 7 of the Act and Section 5, Rule 6 of the IRR shall not apply following the effectivity of these Guidelines. Pending classification in accordance with these Guidelines assets currently classified as Subtransmission Assets by TRANSCO are deemed Transmission Assets for the purpose of possible upgrade and expansion in accordance with Section 8 of the Act.

Section 2. Technical and Functional Criteria - The assets shall be classified based on the technical and functional criteria enumerated in Sections 4, 5, and 6, Rule 6, Part II of the IRR of the Act, including, but not necessarily limited to, the following:

a) **Directly Connected Generators**

Lines, power transformers and other assets held by TRANSCO or its Buyer or Concessionaire, which allow the transmission of electricity to a Grid from one or more Directly Connected Generators, shall be classified as Transmission Assets.

b) **Directly Connected End-Users**

Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or Concessionaire which directly connect an End-User or group of End-Users and are exclusively dedicated to the service of that End-User or group of End-Users shall be classified as Subtransmission Assets.

c) **Directly Connected Load-End Substation**

Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or Concessionaire which directly connect a load-end substation of one or more Distribution Utilities to a Grid but no Directly Connected Generators shall be classified as Subtransmission Assets.

ARTICLE IV

QUALIFICATION CRITERIA FOR DISTRIBUTION UTILITIES OR CONSORTIUM OF DISTRIBUTION UTILITIES

Section 1. Technical Capability Criteria - The Technical criteria for qualification shall include an ERC Certification indicating that the Distribution Utility has submitted a three (3) year Compliance Plan for all standards specified in the statement of compliance which currently have not been complied with to show its desire and intent to abide by with all of the standards set forth in the Philippine Grid and Distribution Codes.

Section 2. Financial Capability Criteria - The financial criteria for qualification shall include but not be 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 exceptions in the case of pending debt restructuring.
- c) At least a financial current ratio of 0.80:1 or a quick ratio of 0.70:1.
- d) A debt ratio of 70% or less or a debt-to-equity ratio of 233% or less.
- e) An average collection period of sixty (60) days or less.
- f) At least positive net profit margin and return on assets.

Section 3. Determination of Qualified Consortium - Each Distribution Utility comprising a Consortium need not meet all the qualification criteria specified in Sections 1 and 2 hereof for the Consortium to be qualified. If the combined qualifications of the Distribution Utilities outweigh the inadequacies of any unqualified Distribution Utilities in the Consortium, the Consortium shall be qualified: Provided, That at least one (1) Distribution Utility in the Consortium complies with all criteria in Sections 1 and 2 hereof.

ARTICLE V

PROCEDURES PRIOR TO FINAL 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 functional criteria established in Article III hereof, to all interested Distribution Utilities or Consortium connected to such subtransmission facilities. The Distribution Utility or Consortium interested in purchasing Subtransmission Assets shall negotiate to acquire all Subtransmission Assets to which they are connected.

Section 2. Asset Valuation - Asset valuation shall be the agreed value as negotiated between TRANSCO and the Qualified Distribution Utility or Qualified Consortium in a manner consistent with Section 8 of the Act. This negotiated value shall be deemed to be the current sound value of the

Subtransmission Assets in any future determination of rates and shall not be substituted by an appraised value using replacement cost methodology. The negotiated value may consider mitigation of possible rate increases to customers paying for the recovery of costs related to Subtransmission Assets.

Section 3. Dispute Resolution - In case of disagreement in valuation procedures, ownership participation and other issues, the TRANSCO or its Buyer or Concessionaire, a Qualified Distribution Utility or a Consortium of Distribution Utilities, may file with ERC a petition for dispute resolution.

All costs arising from, incidental to, or otherwise attributable to the resolution of any petition for dispute resolution shall be borne equally by the parties to the dispute.

Section 4. Approval by ERC - Prior to the final sale and transfer of such subtransmission facilities by TRANSCO to Qualified Distribution Utility and Consortium of Distribution Utilities, the parties shall obtain ERC approval on each of the following:

- a) The assets meet the technical and functional criteria for Subtransmission Assets established in Article III hereof;
- b) The Distribution Utility or Consortium meets the qualifications criteria established in Article IV hereof;
- c) A rate proposal by the Distribution Utility or Consortium for the recovery of the negotiated value and operation and maintenance costs related to the acquired Subtransmission Assets including any proposal to mitigate or otherwise phase in possible rate change impacts if such exist.

In order to facilitate the review and approval of the proposed sale and transfer of Subtransmission Assets by TRANSCO to the Qualified Distribution Utility or Consortium of Distribution Utilities, ERC shall require the concerned parties to submit the following documents, if applicable,:

- a) Description of the franchise area being served;
- b) Description and electrical diagram of the lines, power transformers and other Subtransmission Assets;

- c) Complete listing of any End-Users connected to the Subtransmission Assets including the contact details for each End-User;
- d) Complete listing of all Distribution Utilities and any End-Users connected to the Subtransmission Assets;
- e) Board Resolution authorizing each party to the sale and purchase of Subtransmission Assets;
- f) Report indicating that assets intended for sale meet criteria for Subtransmission Assets;
- g) Report indicating that the Distribution Utility or the Consortium of Distribution Utilities intending to purchase Subtransmission Assets comply with the technical and financial standards prescribed in Article IV hereof;
- h) All billing determinants that may be used as part of the rate proposal;
- i) Draft agreement between parties to the sale and purchase of Subtransmission Assets;
- j) All other supporting data, documents, and analysis that may be needed by the ERC in the course of the review

Section 5. TRANSCO Rates - TRANSCO shall immediately cease billing of the subtransmission rates upon the date of final sale and transfer of all connected Subtransmission Assets to a Qualified Distribution Utility or Qualified Consortium but will continue billing the existing subtransmission rates to any entity connected to Subtransmission Assets that have not been acquired by a Qualified Distribution Utility or Qualified Consortium. No later than 27 months following the effectivity of these guidelines, the TRANSCO shall include any remaining assets previously classified as subtransmission in the recalculation of transmission rates. Following approval of the recalculated transmission rates by ERC, TRANSCO shall cease billing all subtransmission rates.

Section 6. Procedure for Filing with ERC - Any petition, application or action to be filed herein shall be governed by the existing Rules of Practice and Procedure Governing Hearings before the ERC, the pertinent provisions of the Act or its IRR and other related laws.

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 or Juridical Entity formed by and composed of two or more Distribution Utilities intending to own, operate, upgrade and expand one or more subtransmission assets.

Section 2. Submission of Required Data - The Consortium or Juridical Entity referred to in the immediately preceding section shall submit the following documents to facilitate the evaluation of the application for a franchise:

- a) Description of the franchise area served by each party to the application;
- b) Board Resolution/s authorizing each party to the application to form a Consortium or Juridical Entity with the other parties to the application;
- c) Description and electrical diagram of each Subtransmission Asset to be acquired by the parties to the application;
- d) Board Resolution/s authorizing each party to the application to acquire each Subtransmission Asset;
- e) Description and/or electrical diagram of the common connection/s of each party to the application;
- f) Complete listing of any persons or entities, other than the parties to the application, connected to each Subtransmission Asset;
- g) Contact details of the persons or entities, other than the parties to the application, connected to each Subtransmission Asset;
- h) Subscription rights of each party to the application;
- i) Audited Financial Statement;
- j) Other documents that may be needed by the ERC in the course of the evaluation.

Section 3. Procedure for filing with ERC - Any petition, application or action to be filed herein shall be governed by the existing Rules of Practice and Procedure Governing Hearings before the ERC, the pertinent provisions of the Act or its IRR and other related laws.

ARTICLE VII

FINAL PROVISIONS

Section 1. Separability Clause - If for any reason, any part or section of these Guidelines 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 Guidelines shall take effect on the fifteenth (15th) day following its publication in two (2) newspapers of general circulation.