

## **RULES GOVERNING THE COLLECTION OF THE UNIVERSAL CHARGE**

**WHEREAS**, Section 34 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (the “*Act*” or “*EPIRA*”), provides for a Universal Charge which shall be imposed on all End-Users for the following purposes:

1. Payment for the Stranded Debts in excess of the amount assumed by the National Government and Stranded Contract Costs of National Power Corporation (“NPC”);
2. Payment for the qualified Stranded Contract Costs of Distribution Utilities;
3. Missionary Electrification;
4. The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
5. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (PhP0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements; and
6. A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

**WHEREAS**, Section 5 of Rule 18 of the Implementing Rules and Regulations of the Act (“*IRR*”) mandates that the Universal Charge shall be a non-bypassable charge which shall be (1) collected from all End-Users on a monthly basis by Distribution Utilities or Suppliers in case of a Contestable Market; or (2) remitted directly to the National Transmission Corporation (“*TRANSCO*”) or its Concessionaire by any End-Users or Self Generation Entities not connected to a Distribution Utility;

**WHEREAS**, Section 7 of Rule 18 of the IRR provides that Self-Generation Facilities which have registered with the ERC and PSALM shall not be covered by the imposition of the Universal Charge for a period of four (4) years from its imposition;

**WHEREAS**, there is a need to establish the Rules for the collection of the Universal Charge and to prescribe the responsibilities of the entities in the collection of the Universal Charge;

**WHEREAS**, Section 34 of the Act mandates the ERC to determine, fix and approve the Universal Charge to be imposed on all End-Users;

**NOW, THEREFORE**, be it RESOLVED as the ERC HEREBY RESOLVES, to adopt the following Rules to Govern the Collection of the Universal Charge:

**Section 1: DEFINITION OF TERMS**

As used in these Rules, the following terms shall have the following respective meanings:

*“Act”* refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;

*“Aggregator”* refers to a Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in a Contestable Market for the purpose of purchasing and reselling electricity on a group basis;

*“Beneficiaries”* refer to entities eligible or authorized by the ERC to avail of the Universal Charge pursuant to EPIRA and its IRR;

*“Buyer or Concessionaire”* refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets; any reference made to TRANSCO shall apply to the Concessionaire upon its assumption of TRANSCO’s responsibilities;

*“Captive Market”* refers to electricity End-Users who do not have the choice of a Supplier of electricity as may be determined by the ERC in accordance with the Act.

*“Collecting Entities”* refer to the entities, namely: (1) TRANSCO or its Buyer or Concessionaire; and (2) Distribution Utilities or Suppliers, in case of Contestable Markets, who are authorized to collect from End-users on a monthly basis the Universal Charge as prescribed by the ERC;

*“Contestable Market”* refers to the electricity End-users who have a choice of a Supplier of electricity, as may be determined by the ERC in accordance with the Act;

*“Department of Finance”* or *“DOF”* refers to the government agency created pursuant to Executive Order No. 127, as amended;

*“Distribution Utility”* refers to any electric cooperative, private corporation, government owned and/or controlled utility or existing local government unit which has an exclusive franchise to operate a Distribution System in accordance with its franchise and the Act;

*“Economic Zones”* or *“EZs”* refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC)

Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);

“*Electric Cooperative*” or “*EC*” refers to a Distribution Utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided for in the Act;

“*Energy Regulatory Board*” or “*ERB*” refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;

“*Energy Regulatory Commission*” or “*ERC*” refers to the independent, quasi-judicial regulatory agency created by Section 38 of the Act;

“*Guidelines*” refers to the “Guidelines and Procedures Governing the Remittances and Disbursements of the Universal Charge” promulgated by PSALM in consultation with the DOF and approved by the ERC;

“*Main Trust Account*” refers to bank account established by PSALM purposely and exclusively for receiving the remittance of the Universal Charge collection from the Collecting Entities.

“*Market Operator*” refers to either the “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall assume the functions, assets and liabilities of the AGMO or the “Independent Market Operator” or “IMO”, the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO pursuant to Section 30 of the Act;

“*Missionary Electrification*” refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing operations in these areas to viability levels;

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

“*National Transmission Corporation*” or “*TRANSCO*” refers to the corporation organized pursuant to the Act to acquire all the transmission assets of NPC;

“*Person*” refers to a natural or juridical person, as the case may be;

“*Power Sector Assets and Liabilities Management Corporation*” or “*PSALM*” refers to the corporation created pursuant to Section 49 of the Act;

“*Self-Generation Entity*” shall have the same meaning as Self-Generation Facility.

“*Self-Generation Facility*” refers to a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by households, clinics, hospitals and other medical facilities;

“*Small Power Utilities Group*” or “*SPUG*” refers to the functional unit of NPC created to pursue Missionary Electrification functions;

“*Special Trust Fund*” or “*STF*” refers to a trust fund established by PSALM for each intended purpose of the Universal Charge and its corresponding Beneficiary or Beneficiaries;

“*Stranded Contract Costs of Eligible Contracts of Distribution Utilities*” refer to the excess of the contracted cost of electricity under eligible contracts of Distribution Utilities over the actual selling price of the contracted energy output of such contracts that would be incurred upon Retail Competition and Open Access. For this purpose, “eligible contracts” are contracts which have been approved by the ERB as of 31 December 2000;

“*Stranded Contract Costs of NPC*” refer to the excess of the contracted cost of electricity under eligible contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of 31 December 2000;

“*Stranded Debts of NPC*” or “*Stranded Debts*” refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sale and Privatization of NPC assets: *Provided, however,* That such obligations include any of such obligations refinanced by PSALM: *Provided, further,* That such refinancing of such unpaid obligations shall not result in increasing the Universal Charge burden;

“*Supplier*” refers to any Person licensed by the ERC to sell, broker, market or aggregate electricity to End-users;

“*Universal Charge*” refers to the charge, if any, imposed for the recovery of the Stranded Debts of NPC , Stranded Contract Costs of NPC, Stranded Contract Costs of Eligible Contracts of Distribution Utilities and for other purposes authorized in Section 34 of the Act;

## **Section 2: COLLECTING ENTITIES**

The Universal Charge shall be collected by the following entities:

- (a) Distribution Utilities
- (b) Suppliers in case of Contestable Markets;
- (c) TRANSCO or its Concessionaire, as the case may be, from End-Users and Self-Generation Entities not connected to a Distribution Utility, nor being served by a Supplier.

## 2.01 **End-Users of Electricity**

The Universal Charge shall be imposed on the following persons:

- (a) All End-Users purchasing electricity from Distribution Utilities such as residential, commercial, and industrial consumers, including government and/or public buildings, irrigation systems, and special lighting systems, other than End-Users who purchase their electricity from a Supplier in case of Contestable Markets;
- (b) All End-Users purchasing electricity from Suppliers in case of Contestable Markets;
- (c) All End-Users who are not connected to a distribution system, such as but not limited to government agencies and institutions, and industrial enterprises;
- (d) Locators, developers, operators and facilities operating in Economic Zones, provided they are not performing the distribution function;
- (e) Persons using Self- Generation facilities;
- (f) Other entities which may be later on identified by the ERC pursuant to the intent of the Act.

## **Section 3: PROCEDURES FOR THE COLLECTION OF UNIVERSAL CHARGE**

### 3.01 **Collection of Universal Charge by Distribution Utilities and Suppliers**

The Universal Charge shall be collected in accordance with the following procedures:

- (a) Each Distribution Utility and Supplier shall determine the quantity of electricity sales in kilowatt-hours (kWh) to each of its End-Users on a monthly basis.
  - (1) In case of un-metered sales to an End-User, the Distribution Utility or Supplier shall determine the amount of electricity sales to such End-User for the monthly period on the same basis as that used by such utility or supplier in determining the amount to be invoiced for its own account or, where no estimate of sales is required for such invoice, on the same basis as that used by such utility or supplier for recording and reporting its total energy sales.
  - (2) In case the electric power bills are issued by the Distribution Utility or Supplier to a particular End-User more than once a month, the provisions of this section shall apply to each electric power bill and the quantity of electricity sales in kilowatt-hours covered by each such bill.
- (b) The electric power bill to be issued to an End-User by the Distribution Utility or Supplier must include the following separately identified items showing the respective amounts per kilowatt-hour, as approved by the ERC and the total amount payable for the billing period for each item:

- (1) Universal Charge for Stranded Debt and Stranded Contract Cost of NPC;
  - (2) Universal Charge for Stranded Contract Cost of Distribution Utilities;
  - (3) Universal Charge for Missionary Electrification;
  - (4) Universal Charge for Equalization of Taxes and Royalties;
  - (5) Universal Charge for rehabilitation and maintenance of watershed areas;
  - (6) Universal Charge for the removal of cross-subsidies.
- (c) The amount billed as Universal Charge shall be paid in full by all End-Users and shall not be included in the computation of Franchise Tax and any discounts granted to them by the Distribution Utility of Supplier.
- (d) The Universal Charge collected by each Distribution Utility or Supplier shall be deposited to the Main Trust Account of PSALM with a bank that PSALM shall specify. A separate account shall be created by PSALM for each of the six (6) intended purposes of the Universal Charge which shall be held in trust for any future claims of Beneficiaries.

### 3.02 **Collection of Universal Charge by TRANSCO**

All End-Users or Self-Generation Entities not connected to a Distribution Utility shall remit the Universal Charge directly to TRANSCO, who in turn shall bill them of the amount of Universal Charge due and payable on a monthly basis. TRANSCO shall collect such amount in accordance with the following procedures:

- (a) TRANSCO shall determine the quantity of electricity usage in kilowatt-hours by every End-User and Self-Generation Facility not connected to a Distribution Utility for each monthly billing period:
1. For End-Users directly connected to TRANSCO facilities, TRANSCO shall base its measurement of their usage of electricity on actual meter reading for the monthly billing period.
  2. For End-Users not connected to a distribution system, TRANSCO shall base its measurement of their usage of electricity on actual meter reading for the monthly billing period by an entity other than a DU or Supplier in case of contestable market. For this reason, the entity from which said End-Users are sourcing their electric power shall furnish TRANSCO of their monthly bill.
  3. Once Self-Generation Facilities are required to pay the Universal Charge, TRANSCO shall be provided access to their meter in order to determine their usage of electricity. In the absence of a meter, every Self-Generation Entity shall be responsible for providing TRANSCO with information on its usage of electricity for the monthly billing period. Such entities shall be held liable for any understatement of information provided to TRANSCO.

4. TRANSCO shall exert its best effort to identify the end-users with self-generation facilities and to submit its report thereon to the ERC.
- (b) The electric power bill to be issued by TRANSCO to every End-User or Self-Generation Entity not connected to a Distribution Utility shall contain information specified in Section 3.01(b).
  - (c) The amount billed as Universal Charge shall be paid in full by all End-Users and Self-Generation Entities and shall not be included in the computation of any discounts granted to them by TRANSCO.
  - (d) TRANSCO shall collect payment for the Universal Charge from End-Users and Self-Generation Entities on the day when payments for own accounts is due.
  - (e) TRANSCO shall require the End-User or Self-Generation Facility to present appropriate documentary evidence to prove that it is paying the Universal Charge to a Supplier or if it disputes the quantity of kilowatt-hours determined by TRANSCO.
  - (f) All amounts collected for Universal Charge shall be deposited by TRANSCO to the Main Trust Account of PSALM with a bank that PSALM shall specify. As mentioned in the foregoing, a separate account shall be created by PSALM for each of the six (6) intended purposes of the Universal Charge which shall be held in trust for any future claims of Beneficiaries.

### 3.03 **Deferment of Universal Charge for Self-Generation Facilities**

Pursuant to Section 7, Rule 18 of the IRR, all Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of four (4) years from its imposition: Provided, That, such Self-Generation Facilities shall register with the ERC and PSALM; **Provided further, such exception shall apply only to kilowatt-hours generated by such self-generation facility.**

### 3.04 **Late, Partial or Non-Payment of Universal Charge**

In the event of late, partial or non-payment of the Universal Charge by any End-User or Self-Generating Entity, except as provided for in Section 3.03, the Collecting Entity concerned shall have the right to exercise all its powers and authority to enforce payment, including but not limited to the power to disconnect the electric service.

### 3.05 **Collection Shortfalls**

In the event that the actual collections of the concerned Collecting Entity for a specific month falls short of the actual billings served to its customers, the Collecting Entity shall remit to PSALM a proportionate share of the Universal Charge in actual

collection which is equivalent to the ratio of the actual collection to the total billing amount multiplied with the total actual collection.

#### **Section 4: PROVISION OF INFORMATION**

##### **4.01 Reportorial Requirements and Procedures**

- (a) Each Collecting Entity shall furnish PSALM with relevant information on its billing and collection for each month to enable PSALM to monitor the proper remittance of the Universal Charge collections for the protection of all End-Users. The Market Operator shall likewise be required to submit information as set out in Section 4.03 to enable PSALM to verify the information provided by the Collecting Entities.
- (b) Each Collecting Entity shall submit to PSALM (by electronic mail or facsimile transmission) the statements or information described in Sections 4.02 through 4.03 for each month on or before the fifteenth (15<sup>th</sup>) day of the succeeding month or in any case no later than the date the Collecting Entity remits its collections of the Universal Charge to the Main Trust Account. For documents sent by electronic mail or facsimile transmission, the original copy of said statement or report must be given to PSALM within ten (10) working days from the remittance of the Universal Charge.

##### **4.02 Reports by Distribution Utilities and Suppliers**

Each Distribution Utility or Supplier, shall submit to PSALM each month the following data/documents:

- (a) A certified statement of its total actual billings of electricity separately identifying the total amount billed in respect of each Universal Charge component. Such statement shall include the total actual sales of electricity in kWh. The form for the Universal Charge Total Actual Billings Statement and sample calculations are attached hereto as Annex "A" and "B", respectively.
- (b) A certified statement of its total actual collections separately identifying the amount collected for each Universal Charge component. The form for the Universal Charge total actual collections and sample calculations are attached hereto as Annex "C" and "D1"- "D2", respectively.
- (c) The Collecting Entity's Chief Financial Officer, or his equivalent or any duly authorized representative, must affix his signature to the statements identified in Sections 4.02(a) and 4.02(b) hereof.
- (d) A Collecting Entity, like the Distribution Utility, authorized by the ERC to collect the Universal Charge for its own Stranded Contract Cost, must identify in its statement under Section 4.02(a) the: 1) amount which it is authorized to avail for this purpose in the relevant month; and 2) amount which it has billed to its End-Users for this purpose in the relevant month. In its statement under Section 4.02(b), said Collecting Entity shall identify separately the amounts

collected from its End-Users for this purpose and withheld from its remittance to the Main Trust Account.

#### 4.03 **Reports by TRANSCO**

- (a) TRANSCO shall submit the documents enumerated in Section 4.02, if applicable, in respect of its invoices to and collections from End-Users directly connected to the transmission system provided that these End-Users are not being served by any Supplier.
- (b) TRANSCO shall submit to PSALM all relevant documents or information in respect of its invoices and collections from Self-Generation Entities.

#### 4.03 **Reports by Market Operator**

The Market Operator shall submit to PSALM not later than the fifteenth (15<sup>th</sup>) day of each month a summary of its actual meter readings in kilowatt-hours of the immediately preceding calendar month, separately identifying each metering point and the corresponding Distribution Utility, Supplier or End-User connected to the transmission system.

### **Section 5: ACCOUNTABILITY AND REPORTING**

- (a) Each Collecting Entity shall collect and retain the Universal Charge collections in a fiduciary capacity and shall remit the same to the Main Trust Account in accordance with the Guidelines.
- (b) Each Collecting Entity shall maintain separate books of accounts for each of the Universal Charge components described in Section 3.01(b), using the accounting entries indicated in Annex "E" hereof. Such books of accounts must be made available to the ERC and PSALM during business hours upon two (2) days prior written notice.
- (c) As required by Section 6 (d) of Rule 18 of the IRR, PSALM shall submit to the DOF and ERC on a quarterly basis a report on the remittances of the Universal Charge by Collecting Entities and disbursements from the STF.

### **Section 6: Fines and Penalties**

The ERC shall monitor and ensure the implementation of this Rule. The ERC may impose the appropriate fines and penalties for any violation or non-compliance with this Rules as provided in Section 5 of the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of RA 9136 dated May 17, 2002.

**Section 7: Separability Clause**

Should any provision or section of these Rules be declared unconstitutional or contrary to law, the parts not so declared shall remain in full force and effect.

**Section 8: Effectivity**

These Rules shall take effect on the fifteenth (15<sup>th</sup>) day following the publication in a newspaper of general circulation in the country.

Done in the City of Pasig this \_\_\_\_<sup>th</sup> day of \_\_\_\_ 2003.