

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

AMENDED RULES AND REGULATIONS IMPLEMENTING  
SECTION 28 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN  
AS THE ELECTRIC POWER INDUSTRY ACT OF 2001

Consistent with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities as enunciated under Section 28 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, the Energy Regulatory Commission hereby adopts and promulgates the following amended rules and regulations to implement the aforesaid section.

**Section 1. *Definition of Terms*** – As used in these Rules:

- (a) *Common Share of Stock* shall refer to the evidence of ownership in a stock corporation with complete voting rights;
- (b) *Controlling Stockholders* shall refer to the stockholders, natural or juridical, singly or collectively with related interests, owning more than 25% of the voting shares of a distribution utility.
- (c) *De-monopolization* shall refer to the process of removing control by a stockholder and related interests in a distribution utility through sale, transfer or other modes of disposition of their stockholding in excess of the ceiling prescribed under R. A. No. 9136;
- (d) *Dispersal of Ownership* shall refer to the sale, transfer or other modes of disposition of the stock ownership of persons, natural or juridical, including directors, officers, stockholders and their related interests in a distribution utility and their respective holding companies;
- (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 RA 9136;
- (f) *Electric Cooperative* shall refer to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or otherwise provided in RA 9136;
- (g) *Energy Regulatory Board (ERB)* shall refer to the independent quasi-judicial regulatory body created under Executive Order No. 172, as amended;

- (h) *Energy Regulatory Commission (ERC)* shall refer to the independent quasi-judicial regulatory body created under RA 9136;
- (i)  *Holding Company* shall refer to a juridical person holding more than 25% of the voting stocks of distribution utility;
- (j)  *Person* shall refer to any being, natural or juridical, capable of possessing legal rights and obligations, or of being the subject of legal relations;
- (k)  *Philippine Stock Exchange (PSE)* shall refer to an entity created under the Revised Securities Act to manage the trading of shares of stocks of listed corporations;
- (l)  *Public Utility* as referred to herein shall mean of distribution company which has been granted a franchise by the Congress of the Philippines and a Certificate of Public Convenience and Necessity (CPCN) by the Energy Regulatory Board or the Energy Regulatory Commission. This term shall likewise refer to an electric cooperative with existing franchise granted by the National Electrification Administration (NEA) subject to the provisions of Section 27 of RA 9136;
- (m)  *Related Interests* shall refer to either a natural person related within the fourth civil degree of consanguinity or affinity to a director, officer or stockholder of a distribution company, or to juridical persons affiliated to each other through common business interest or belonging to a business group where the holdings of the stockholders altogether constitute a majority or control in one (1) or more enterprises;
- (n)  *Small Distribution Company* shall refer to a distribution facility whose peak demand to or less than ten (10) MW.

**Section 2. Coverage.** – These Rules shall apply to all private distribution utilities except electric cooperatives.

**Section 3. Divestment of Shareholdings in Distribution Utilities** – The holdings of any person, natural or juridical, including directors, officers, stockholders and their related interests in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the total voting shares of stock.

Any holding in excess of the ceiling prescribed herein shall be divested in accordance with these Rules.

***Divestment, for purposes of these Rules, shall include any mode of disposition including sale or transfer either directly or through the Philippine Stock Exchange (PSE).***

**Section 4. *Exemption from Divestment of Shareholdings.*** – The provisions of the preceding section shall not apply to a distribution utility or the company holding the shares or its controlling stockholder/s whose shares are already listed on the PSE at the time of the effectivity of RA 9136.

**Section 5. *Period of Divestment for Distribution Utilities.*** – *Consistent with the Constitutional mandate for the State to encourage equity participation in public utilities by the general public*, Distribution Utilities with peak demand of more than 10 MW *but not exceeding 100 MW*, whose directors, officers stockholders and their related interests together with their respective holding companies, own more than twenty-five (25%) percent of the total voting shares of stocks *shall effect the divestment of the excess of the prescribed ceiling in accordance with Section 3 hereof, within three (3) years from* the effectivity of these Rules, but not later than five (5) years from the effectivity of RA 9136, *while those with peak demand of more than 100 MW shall effect the divestment of the excess of the prescribed ceiling in accordance with Section 3 hereof, within one (1) year from the effectivity of these Rules, but not later than two (2) years from the effectivity of RA 9136.*

Small Distribution Companies whose directors, officers, stockholders and their related interests together with their respective holding companies own more than twenty-five (25%) percent of the total voting shares of stocks *shall effect the divestment of the excess of the prescribed ceiling in accordance with Section 3 hereof*, within five (5) years from the effectivity of RA 9136.

Small Distribution Companies which, after the date of the effectivity of RA 9136, shall have new directors, officers, stockholders and their related interests together with their respective holding companies owning more than twenty-five (25%) percent of their total voting shares shall undertake such divestment within five (5) years from the time said stockholders acquire ownership and control over the companies.

**Section 6. *Registration of Securities.*** – Unless exempted, all stocks and securities of distribution utilities must be registered with the Securities and Exchange Commission (SEC), prior to their listing on the PSE.

The registration of stocks and securities shall be subject to the existing rules and regulations of the SEC.

**Section 7. *PSE Listing.*** – The registered voting stocks and securities of distribution utilities covered by these Rules shall be listed on the PSE in accordance with its applicable rules and regulations.

**Section 8. *Reportorial Requirements.*** – Distribution utilities covered by these Rules shall, within sixty (60) days upon listing of their common shares of stocks on the PSE, submit reports to the ERC on the extent of their compliance herewith together with Certifications from the PSE showing the number of shares listed, names of the

shareholders presently owning the said shares and other relevant informations for monitoring and verification purposes.

**Section 9. *Imposition of Fines and Penalties.*** – Any person, natural or juridical, found guilty of violating these rules and regulations shall be subject to the penalties provided under Section 46 of RA 9136.

**Section 10. *Separability Clause.*** – If for any reason, any 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 11. *Effectivity Clause.*** – These Implementing Rules and Regulations shall take effect on the fifteenth (15<sup>th</sup>) day following its publication in two (2) newspapers of general circulation.

Pasig City, March 13, 2002.

(Sgd.) FE B. BARIN  
Chairman

(Sgd.) MARY ANNE B. COLAYCO  
Commissioner

(Sgd.) OLIVER B. BUTALID  
Commissioner

(Sgd.) CARLOS R. ALINDADA  
Commissioner

(Sgd.) LETICIA V. IBAY  
Commissioner