

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

**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 I

KEY FUNCTIONS OF THE ERC

Section 1. Duties and Responsibilities of the ERC. - Republic Act No. 9136, hereinafter referred to as the Act, declares ERC responsible for, among other things, the following key functions in the Restructured Electric Power Industry:

- a) Enforce the Implementing Rules and Regulations (IRR) of the Act.
- b) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC.
- c) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency.
- d) Review and approve any change on the terms and conditions of service of the TRANSCO or any distribution utility.
- e) Impose fines or penalties for any non-compliance with or breach of the Act, the IRR of the Act and the rules and regulations which it promulgates or administers.

- f) *Motu proprio*, to monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and impositions of fines and penalties pursuant to the Act.
- g) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition.

ARTICLE II

SCOPE AND DEFINITION OF TERMS

SECTION 2. SCOPE. - This Guidelines shall apply to all persons violating or failing to comply with the Act and its IRR, the Philippine Grid and Distribution Codes and rules, regulations, orders, resolutions and other laws the issuance and/or enforcement of which is assigned to the ERC.

SECTION 3. DEFINITION OF TERMS. - As used in this Guidelines, the following terms shall have the following respective meanings:

- a) "Act" shall refer to Republic Act No. 9136 which took effect on June 26, 2001.
- b) "Distribution Code" shall refer to the compilation of rules and regulations governing electric utilities in the operation and maintenance of their Distribution Systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the Distribution Systems with the facilities or installations of the parties connected thereto.

- c) "Distribution Utility" shall refer to any electric cooperative, private corporation, government-owned or existing local government unit which has an exclusive franchise to operate a Distribution System in accordance with its franchise and the Act.
- d) "Grid Code" shall refer to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities.
- e) "Energy Regulatory Commission" or "ERC" shall refer to the regulatory agency created pursuant to Section 38 of the Act.
- f) "Implementing Rules and Regulations" or "IRR" shall refer the rules and regulations of Republic Act No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001 promulgated by the Department of Energy (DOE) and approved on February 27, 2002 by the Joint Congressional Power Commission (Power Commission).
- g) "Person" shall refer to natural as well as juridical persons.

ARTICLE III

ADMINISTRATIVE SANCTIONS

SECTION 4. NON-SUBMISSION OF DOCUMENTS. – A penalty of Fifty Thousand Pesos (P50,000) plus One Hundred Pesos (P100) a day for every day of violation shall be imposed upon any person who fails, without any justifiable reason, to submit documents such as Annual Reports, Monthly Financial and Statistical Reports, computations of the Purchased Power Adjustment, Mandated Rate Reduction, Wage Adjustment Clause, Fuel and Purchased Power Cost Adjustment and FOREX, Financial Statements, sample bills and other documents required and deemed material and pertinent by the ERC.

SECTION 5. NON-COMPLIANCE WITH THE PROVISIONS OF THE ACT AND ITS IRR, GRID AND DISTRIBUTION CODES AND RULES, REGULATIONS, ORDERS, RESOLUTIONS AND OTHER LAWS OF THE

ERC. - A fine of One Hundred Thousand Pesos (P100,000) plus One Hundred Pesos (P100) a day for every day of violation shall be imposed upon any person who has been found to have committed a violation of any of the provisions of the Act and its IRR, the Philippine Grid and Distribution Codes and rules, regulations, orders, resolutions and other laws the implementation and enforcement of which are assigned to the ERC, including but not limited to the following:

- a) Operating as a Generation Company/Facility without a valid Certificate of Compliance (COC) and appropriate clearances.
- b) Failure to provide open and non-discriminatory access to the Transmission and Distribution System, as and when prescribed/required.
- c) Non-compliance with the prescribed technical specifications and performance standards.
- d) Non-submission of a plan to comply with technical specifications prescribed by the Grid or Distribution Codes and/or failure to implement said plan within three (3) years from the effectivity of the said Codes.
- e) Operating as an Electricity Supplier without a valid license or permit.
- f) Failure to file an application for unbundling of rates.
- g) Operating as a Transmission or Distribution Utility without a valid Certificate of Public Convenience and Necessity (CPCN).
- h) Failure to file duly negotiated Transition Supply Contracts within the time prescribed by law.
- i) Failure to implement the mandated rate reduction.
- j) Failure of the Distribution Utility to adopt and implement a lifeline rate.

SECTION 6. ISSUANCE OF NOTICE AND WARNING. - The penalty provided in the preceding sections shall be imposed only after the offender has been duly informed in writing of said violation, has been given an opportunity to present an explanation and has been duly warned of the consequences of said violation. The imposition of any administrative sanction is without prejudice to any

criminal action that may be filed, if warranted, under existing laws, rules and regulations.

SECTION 7. ANTI-COMPETITIVE ACTS. – A penalty not lower than Fifty Thousand Pesos (P50,000) but not exceeding Fifty Million Pesos (P50,000,000) at the discretion of the ERC, shall be imposed upon any person who has been found, after due notice and hearing, to have engaged in any anti-competitive act including but not limited to cross-ownership, cross-subsidization, price or market manipulation or other unfair trade practices, taking into consideration its effect on the electric industry and its participants. This monetary sanction shall be without prejudice to the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and any criminal action that may be filed, if warranted, under existing laws, rules and regulations.

SECTION 8. FRAUD OR MISREPRESENTATION. – A penalty not lower than Fifty Thousand Pesos (P50,000) but not exceeding Fifty Million Pesos (P50,000,000) at the discretion of the ERC, shall be imposed upon any Distribution Utility which has been found, after due notice and hearing, to have committed fraud or misrepresentation in connection with its failure to comply with its obligation to mitigate potential stranded contract costs as provided under Section 33 of the Act and Rule 17 of its IRR. This monetary sanction shall be without prejudice to the requirement of divestment or disgorgement of excess profits and any criminal action that may be filed, if warranted, under existing laws, rules and regulations.

SECTION 9. REVOCATION OF FRANCHISE OR PRIVILEGE. - The repeated commission of violations provided under Sections 5, 7 and 8 hereof shall be a ground for ERC to recommend to Congress the revocation of the franchise or privilege granted to the offender.

ARTICLE IV

CONTEMPT

SECTION 10. CONTEMPT. A fine not exceeding Fifty Thousand Pesos (P50,000) at the discretion of the ERC, may be imposed upon any person guilty

of such misconduct as to seriously interrupt any hearing or session or any proceedings before it, or willfully fails or refuses, without just cause, to comply with the subpoena ad testificandum and subpoena duces tecum legally issued or promulgated by the ERC; or being present at the hearing, session or investigation, refuses to be sworn as a witness or to answer questions when lawfully required to do so or to furnish information required by the ERC.

ARTICLE V

COMPROMISE SETTLEMENT

SECTION 11. OFFERS OF SETTLEMENT. - Any party to an administrative proceeding may, at any time before a decision is rendered, make an offer to the ERC conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the Commission nor as a waiver to file any warranted criminal actions.

The ERC shall not accept an offer of settlement in the amount lower than 50% of the computed penalty. However, in exceptional cases and at the full discretion of the Commission, an amount lower than 50% may be accepted taking into consideration the following circumstances:

- a) The good faith of the offender
- b) The gravity of the violation
- c) The offense was committed for the first time
- d) Other reasons that the Commission en banc shall consider meritorious.

No compromise settlement shall be allowed after the case shall have been finally decided by the ERC.

ARTICLE VI

EFFECTIVITY

SECTION 12. EFFECTIVITY. - This Guidelines shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation in the country.

Pasig City, May 17, 2002

(Sgd.) FE B. BARIN
Chairman

(Sgd.) MARY ANNE B. COLAYCO
Commissioner

(On Leave)
OLIVER B. BUTALID
Commissioner

(On Leave)
CARLOS R. ALINDADA
Commissioner

(Sgd.) LETICIA V. IBAY
Commissioner