

ENERGY REGULATORY COMMISSION

COMPLAINT PROCEDURE RULES

Table of Contents

Rule 1 – Preamble	2
Rule 2 – Object of Complaint Procedure Rules	2
Rule 3 – Scope	2
Rule 4 – Definitions	2
Rule 5 – Initiation of investigations	3
Rule 6 – Conduct of investigations	4
Rule 7 – Custodian and confidentiality of material	7
Rule 8 – Appointment of Hearing Panel, Parties and legal representation	8
Rule 9 – Initiation of proceedings	9
Rule 10 – Motions	12
Rule 11 – Motion for pre-emptive order	13
Rule 12 – Filing and service	14
Rule 13 – Pre-hearing conference	16
Rule 14 – Hearings	17
Rule 15 – Provision of information, production of documents and attendance of witnesses	17
Rule 16 – Evidence	19
Rule 17 – Conduct of Proceedings	20
Rule 18 - Duties of Hearing Panel	20
Rule 19 – Overriding Power	21
Rule 20 – Orders	21
Rule 21 – Effectivity of decisions	22
Rule 22 – Motion for reopening or reconsideration	22
Rule 23 – Confidentiality	22
Rule 24 – Applicability of the Rules of Court	24
Rule 25 - Amendment	24
Rule 26 – Interpretation	24
Rule 27 – Computation of time	24
Rule 28 – Separability	25
Rule 29 – Application to other proceedings	25
Rule 30 – Effectivity	25

PART I - GENERAL

Rule 1 – Preamble

Section 45 of the Electric Power Industry Reform Act (the **EPIRA**) and rule 11.7(e) of the Implementing Rules and Regulations issued pursuant to the EPIRA (the **IRR**) require the Energy Regulatory Commission (the **ERC**) to promulgate rules and regulations providing for a complaint procedure that is to apply for the purposes of the Competition Rules.

These Complaint Procedure Rules are made pursuant to section 45 of the EPIRA and rule 11.7(e) of the IRR.

Rule 2 – Object of Complaint Procedure Rules

The object of these Complaint Procedure Rules is:

- (a) to prescribe the manner in which the ERC will investigate possible violations of the Competition Rules; and
- (b) to ensure that adjudicative proceedings before the ERC are conducted in accordance with the requirements of due process and, subject to those requirements, with as little formality and technicality, and as much expedition, as a proper consideration of the matters before the ERC permits.

Rule 3 – Scope

Part II of these Complaint Procedure Rules governs the procedures of the ERC in relation to the investigation of matters that may constitute a violation of the Competition Rules.

Part III of these Complaint Procedure Rules governs the procedures that apply in relation to the prosecution by the ERC of alleged violations of the Competition Rules, adjudicative proceedings before the ERC pertaining to matters arising under the Competition Rules and the determination of those proceedings.

Rule 4 – Definitions

In these Complaint Procedure Rules, unless the contrary intention appears:

“**Answer**” means a document described in rule 9(4), as amended from time to time pursuant to rules 9(9), (12), (13) or (14);

“**Chairman**” means the Chairman of the ERC or another Member appointed to act in that position from time to time;

“**Competition Rules**” means the rules of that name made by the ERC pursuant to section 45 of the EPIRA and rule 11.8 of the IRR;

“**Complaint**” means a document described in rule 9(2), as amended from time to time pursuant to rules 9(7), (12), (13) or (14);

“Custodian”, in relation to the investigation of a matter that may constitute a violation of the Competition Rules, means a member of the Investigatory Unit who is designated by the Investigating Commissioner as the Custodian for that matter;

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

“ERC” means the Energy Regulatory Commission created by section 38 of the EPIRA;

“Hearing Panel”, in relation to a Complaint, means those Members constituted by the Chairman as the Hearing Panel to deal with all matters arising out of or in connection with that Complaint;

“Investigating Commissioner” means the Member designated as the Investigating Commissioner by the ERC who is responsible for investigating matters that may constitute a violation of the Competition Rules, for prosecuting alleged violations of the Competition Rules and for taking action to prevent apprehended violations of the Competition Rules;

“Investigatory Unit” means those ERC staff (including employees and consultants) whose functions include the investigation of matters that may constitute a violation of the Competition Rules, the prosecution of alleged violations of the Competition Rules and the taking of action to prevent apprehended violations of the Competition Rules, in each case under the supervision of the Investigating Commissioner;

“IRR” refers to the Implementing Rules and Regulations issued pursuant to the EPIRA;

“Member” means any member of the ERC, including the Chairman;

“Party”, in relation to proceedings before a Hearing Panel, means the Investigating Commissioner (including acting through the Investigatory Unit) and the Respondent who is served with the Complaint to which the proceedings relate, and a reference to the Investigating Commissioner in his capacity as a Party includes the Investigating Commissioner acting through the Investigatory Unit;

“Pleading” means a Complaint or an Answer;

“Respondent” means a person who is served with a Complaint that alleges that person to have violated the Competition Rules;

and terms used in these Complaint Procedure Rules which are defined in the EPIRA or the IRR (not being terms which are otherwise defined in this rule 4) have the meaning given to them in the EPIRA or the IRR (as the case may be).

PART II - INVESTIGATIONS

Rule 5 – Initiation of investigations

- (1) Without in any way limiting the circumstances in which the ERC may initiate an investigation into matters that may constitute a violation of the Competition Rules, such an investigation may be commenced upon the request of the President of the Philippines, Congress, a governmental agency, an electric power industry participant, a member of the public or any other person, or by the ERC upon its own initiative.

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- (2) Any request for the ERC to investigate a matter that may constitute a violation of the Competition Rules must be given to the Investigating Commissioner.

Rule 6 – Conduct of investigations

General

- (1) The Investigating Commissioner is responsible for investigating matters that may constitute a violation of the Competition Rules. For this purpose:
- (a) the powers of the ERC under rules 12(1), (3), (4), (6) and (7) of the Competition Rules have been delegated by the ERC (on a non-exclusive basis) to the Investigating Commissioner;
 - (b) the powers of the ERC under rule 12(12) of the Competition Rules have been delegated by the ERC (on a non-exclusive basis) to the Investigating Commissioner to enable the Investigating Commissioner to enforce the exercise by him of the powers delegated to him as described in subsection (1)(a); and
 - (c) the Investigatory Unit has been established to investigate, under the supervision of the Investigating Commissioner, matters that may constitute a violation of the Competition Rules.
- (2) A notice under rule 12(1) or rule 12(7) of the Competition Rules which is given by the Investigating Commissioner in the exercise of the powers delegated to the Investigating Commissioner as described in subsection (1)(a) must be signed by the Investigating Commissioner.

Notices under rule 12(1) of the Competition Rules

- (3) Each notice which is given by the Investigating Commissioner under rule 12(1)(a) or (b) of the Competition Rules must identify the Custodian to whom the information or documents referred to in that notice is to be provided or are to be produced.
- (4) Each notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules must identify:
- (a) the Investigating Commissioner or a member of the Investigatory Unit as the person before whom the relevant evidence is to be given; and
 - (b) the Custodian by whom the transcript of that evidence is to be kept.
- (5) Where a notice which is given by the Investigating Commissioner under rule 12(1) of the Competition Rules is directed at a natural person, it must be served on that person by:
- (a) delivering it to that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (b) sending it by registered mail, return receipt requested, properly addressed and with postage prepaid, to that person at that person's residence or principal office or place of business (in which case the return post office receipt of delivery will be proof of such service).

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- (6) Where a notice which is given by the Investigating Commissioner under rule 12(1) of the Competition Rules is directed at a person other than a natural person, it must be served on that person by:
- (a) delivering it to any officer of that person or to any agent of that person who is authorized (whether generally or specifically) to receive service of process on behalf of that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (b) delivering it to the principal office or place of business of that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (c) sending it by registered mail, return receipt requested, properly addressed and with postage prepaid, to that person at that person's principal office or place of business (in which case the return post office receipt of delivery will be proof of such service).
- (7) The provision of information or production of documents pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(a) or (b) of the Competition Rules must be made under a sworn certificate, in such form as the notice designates, by:
- (a) if the person to whom the notice is directed is a natural person – that person; or
 - (b) if the person to whom the notice is directed is a person other than a natural person – any person having knowledge of the facts and circumstances relating to the provision of the information or the production of the documents (as the case may be),
- to the effect that all of the information or documents referred to in the notice has been provided or have been produced (as the case may be).

Refusal or failure to comply with notice

- (8) If a person has a lawful excuse for refusing or failing to comply with a notice which is given by the Investigating Commissioner under rule 12 of the Competition Rules, that person must give the reasons for such refusal or failure under a sworn certificate by:
- (a) if the person to whom the notice is directed is a natural person – that person; or
 - (b) if the person to whom the notice is directed is a person other than a natural person – any person having knowledge of the facts and circumstances relating to the refusal or failure.

Oral evidence

- (9) Where a person is required to give evidence pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules, the Investigating Commissioner or member of the Investigatory Unit before whom that evidence is to be given must:
- (a) put that person on oath or affirmation;

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- (b) personally, or by an individual acting under the direction and in the presence of the Investigating Commissioner or member of the Investigatory Unit, record the testimony of that person; and
 - (c) exclude from the place where the testimony is to be taken all persons except the person giving the evidence, that person's attorney, the person before whom the evidence is to be taken, the person who is recording the testimony, any members of the Investigatory Unit who are involved in the matter and any legal advisers retained by the ERC in connection with the matter.
 - (10) Any person who is required to give evidence pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules may be accompanied, represented and advised by an attorney, and the attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of that person.
 - (11) If a person who appears before the Investigating Commissioner or a member of the Investigatory Unit pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules:
 - (a) refuses or fails to be sworn or affirmed; or
 - (b) refuses or fails to answer a question when required to do so,that person (or that person's attorney) must state for the record the reason for that refusal or failure.
 - (12) A person who appears before the Investigating Commissioner or a member of the Investigatory Unit pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules (or that person's attorney) may object on the record to any question, in whole or in part, and must state for the record the reason for that objection.
 - (13) Testimony given by a person who appears before the Investigating Commissioner or a member of the Investigatory Unit pursuant to a notice which is given by the Investigating Commissioner under rule 12(1)(c) of the Competition Rules must be transcribed and, after it has been fully transcribed, that person and that person's attorney (if any) must be afforded a reasonable opportunity to examine the transcript. Any changes which that person desires to make to the transcript must be entered and identified upon the transcript by the Investigating Commissioner or member of the Investigatory Unit with a statement of the reasons given by the person for making such changes. The transcript must then be signed:
 - (a) by that person; or
 - (b) if it is not signed by that person within 30 days following the date on which that person was first afforded a reasonable opportunity to examine the transcript - by the Investigating Commissioner or member of the Investigatory Unit, in which case the Investigating Commissioner or member of the Investigatory Unit must state on the record the fact of the failure to sign together with any reasons for that failure (if known).

The Investigating Commissioner or member of the Investigatory Unit must certify on the transcript that the person was duly sworn or affirmed by him or her and that the transcript is a true record of the testimony given by that person, and the Investigating Commissioner or member of the Investigatory Unit must promptly deliver the transcript to the Custodian for that matter.

- (14) The Investigating Commissioner or member of the Investigatory Unit must provide a copy of the transcript (upon the payment of reasonable charges for the transcription) to the person giving the testimony the subject of the transcript.

Copies of, and extracts from, documents obtained under rule 12 of the Competition Rules

- (15) Where copies of, or extracts from, a document are made or taken under rule 12(3) or rule 12(7) of the Competition Rules, such document being produced pursuant to or in accordance with a notice which is given by the Investigating Commissioner under rule 12(1) or rule 12(7) of the Competition Rules, the person making those copies or taking those extracts must promptly deliver them to the Custodian for that matter.

Rule 7 – Custodian and confidentiality of material

- (1) The Custodian for a matter is responsible for the safekeeping of such written information, documents (including copies of documents and extracts from documents) and transcripts of testimony as are delivered to the Custodian pursuant to a notice given by the Investigating Commissioner under rule 12(1)(a) or (b) of the Competition Rules or pursuant to rule 6.
- (2) The Custodian for a matter must not provide or disclose to any person, or copy, any written information, documents or transcripts of testimony in relation to that matter which have been delivered to the Custodian as described in subsection (1), except that the Custodian must:
- (a) make and supply such copies of that material as are required by the Investigating Commissioner, any member of the Investigatory Unit or any legal adviser retained by the ERC in connection with an investigation or prosecution relating to that matter;
 - (b) make that material available to the Investigating Commissioner, any member of the Investigatory Unit and any legal adviser retained by the ERC where the Investigating Commissioner, member of the Investigatory Unit or legal adviser requires that material in connection with an investigation or prosecution relating to that matter;
 - (c) supply a copy of that material, make that material available for inspection and allow copies or extracts of that material to be made or taken, in accordance with rule 12(4) or rule 12(5) of the Competition Rules;
 - (d) make that material, or copies of it, available to or at the direction of any Member where such material is required in connection with any proceedings before a court that relate to that matter; and
 - (e) return any documents produced pursuant to a notice given by the Investigating Commissioner under rule 12(1)(b) of the Competition Rules to the person who

produced those documents once those documents cease to be required by the ERC in connection with an investigation or prosecution relating to the matter in respect of which they were produced or in connection with any proceedings before a court that relate to that matter.

- (3) Except as provided in subsection (2), any information obtained by the Investigating Commissioner, a member of the Investigatory Unit or any legal adviser retained by the ERC in the course of investigating a matter that may constitute a violation of the Competition Rules may only be disclosed by such a person to another person who is not one of the foregoing where such disclosure:
- (a) is required or permitted by or under a rule contained in Part III or Part IV of these Complaint Procedure Rules; or
 - (b) is made in the course of a hearing relating to that matter before a Hearing Panel; or
 - (c) is made in connection with any proceedings before a court that relate to that matter.

PART III – ADJUDICATIVE PROCEEDINGS

Rule 8 – Appointment of Hearing Panel, Parties and legal representation

- (1) As soon as is reasonably practicable after a Complaint is filed with the Registrar of the ERC, the Chairman must constitute a Hearing Panel to deal with all matters arising out of or in connection with that Complaint.
- (2) A Hearing Panel must consist of at least three Members, one of whom is designated by the Chairman as the presiding member of the Hearing Panel.
- (3) The Investigating Commissioner must not be a member of any Hearing Panel.
- (4) The Chairman may change the membership of a Hearing Panel that is constituted for the purposes of dealing with a Complaint, or change the Member who is the presiding member of a Hearing Panel:
- (a) at any time before the commencement of the first hearing of the Hearing Panel in relation to the Complaint; or
 - (b) if any member of the Hearing Panel ceases to be a Member, or ceases to be available for the purposes of the relevant proceedings, at any time after the commencement of the first hearing by the Hearing Panel in relation to the Complaint.
- (5) The only persons who are entitled to appear and participate in proceedings before a Hearing Panel are:
- (a) the Investigating Commissioner (including acting through the Investigatory Unit); and
 - (b) the Respondent who has been served with the Complaint to which the proceedings relate,

in which case such appearance and participation will be in accordance with, and governed by, these Complaint Procedure Rules.

- (6) Any Party may appear and participate in proceedings before a Hearing Panel in person or by an attorney admitted to practice law in the Philippines. Except with the leave of the Hearing Panel, no attorney may appear on behalf of a Party without first filing with the Registrar of the ERC a written notice of appearance.
- (7) A Hearing Panel may, upon motion by a person who is not a Party, permit that person to appear and participate in proceedings before the Hearing Panel (either generally or for a limited purpose), in which case that person must comply with such of these Complaint Procedure Rules, and such other terms and conditions, as the Hearing Panel determines to be appropriate.

Rule 9 – Initiation of proceedings

Complaint

- (1) The Investigating Commissioner may only commence proceedings against a person for an alleged violation of the Competition Rules by serving on that person a Complaint (together with all supporting affidavits and documents referred to in subsection (11)).
- (2) The Complaint must contain:
 - (a) the name and address of the Respondent;
 - (b) if practicable, the date of commission of the alleged violation;
 - (c) the provision or provisions of the Competition Rules which the Respondent is alleged to have violated;
 - (d) a concise statement of the acts, omissions and ultimate facts constituting the alleged violation; and
 - (e) the order or orders that the ERC is requested to make if the ERC determines that the Respondent has committed the alleged violation,and must:
 - (f) direct the Respondent to file an Answer (together with all supporting affidavits and documents referred to in subsection (11)) with the Registrar of the ERC within 20 days of the service of the Complaint on the Respondent; and
 - (g) state that, unless such an Answer is so filed, the Respondent will be deemed to have waived its right to appear and participate in the proceedings and to have authorized the ERC, without further notice to the Respondent, to find the facts to be as alleged in the Complaint and to make such orders against the Respondent on the basis of that finding as the ERC considers to be appropriate.
- (3) A Complaint may allege two or more violations of the Competition Rules by the Respondent, in which case each violation must be separately alleged and these Complaint Procedure Rules will apply in respect of each such alleged violation *mutatis mutandis*.

Answer

- (4) Within 20 days of the service of a Complaint on the Respondent, the Respondent must file an Answer (together with all supporting affidavits and documents referred to in subsection (11)) with the Registrar of the ERC.
- (5) The Answer must:
 - (a) specifically admit or deny each of the material allegations of fact stated in the Complaint or set out the reasons the Respondent cannot admit or deny those allegations; and
 - (b) concisely state the matters of fact and law relied upon by the Respondent by way of defence.
- (6) The failure of the Respondent to file an Answer with the Registrar of the ERC in accordance with subsection (4) will be deemed to constitute a waiver by the Respondent of the Respondent's right to appear and participate in the proceedings and to authorize the Hearing Panel, without further notice to the Respondent, to find the facts to be as alleged in the Complaint and to make such orders against the Respondent on the basis of that finding as the Hearing Panel considers to be appropriate.

Amended Complaint

- (7) Within 10 days of the filing of an Answer with the Registrar of the ERC in accordance with subsection (4), the Investigating Commissioner may serve an amended Complaint on the Respondent.
- (8) The amended Complaint must:
 - (a) comply with the requirements of subsection (2)(a) to (e) and (3); and
 - (b) state that the Respondent is entitled to file an amended Answer with the Registrar of the ERC within 10 days of the service of the amended Complaint on the Respondent.

The amendments made to the Complaint that was served on the Respondent under subsection (1) must be indicated by appropriate marks. Without limiting the amendments that may be made to a Complaint pursuant to this subsection, such amendments may include the addition, modification or striking out of an allegation or the correction of a mistake in the name of the Respondent. The amended Complaint must also comply with subsection (11) except that, where such affidavits and documents have already been served on the Respondent under subsection (1), the amended Complaint need not be accompanied by those affidavits and documents but must instead contain a statement to that effect which clearly identifies each of those affidavits and documents by reference.

Amended Answer

- (9) Within 10 days of the service of an amended Complaint on the Respondent in accordance with subsection (7), the Respondent may file an amended Answer with the Registrar of the ERC.
- (10) The amended Answer must comply with the requirements of subsection (5) and the amendments made to the Answer that was filed with the Registrar of the ERC under

subsection (4) must be indicated by appropriate marks. The amended Answer must also comply with subsection (11) except that, where such affidavits and documents have already been filed with the Registrar of the ERC under subsection (4), the amended Answer need not be accompanied by those affidavits and documents but must instead contain a statement to that effect which clearly identifies each of those affidavits and documents by reference.

Verification of Pleadings

- (11) All Pleadings must be verified or accompanied by affidavits and by such documents as would reasonably tend to establish prima facie the truth of the factual allegations contained in them. A Pleading is verified by an affidavit stating that the person verifying has read the Pleading and that the allegations of fact contained in it are true to that person's own personal knowledge. A verification based on "knowledge, information and belief" is sufficient.

Amendment of Pleadings

- (12) The Hearing Panel may, at any time, on its own motion or upon the motion of a Party, direct a Party to amend its Pleading in order to state that Party's case more fully or in a more detailed or specific manner. If:
- (a) the Pleading is a Complaint, then the amended Complaint, with the amendments made being indicated by appropriate marks, must be served by the Investigating Commissioner on the Respondent within such time as is ordered by the Hearing Panel; or
 - (b) the Pleading is an Answer, then the amended Answer, with the amendments made being indicated by appropriate marks, must be filed by the Respondent with the Registrar of the ERC within such time as is ordered by the Hearing Panel.
- (13) When, at a hearing under rule 14, issues not raised by the Pleadings are introduced by express or implied consent of the Parties, they will be treated in all respects as if they had been raised in the Pleadings. If evidence upon a new issue is objected to on the ground that the issue is not among those raised in the Pleadings, the Hearing Panel may allow the Pleadings to be amended and receive such evidence when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the rights of any Party. The Hearing Panel may grant a continuance to enable the objecting party to meet such evidence.
- (14) A Party may only amend its Pleading other than pursuant to subsection (7), (9), (12) or (13), and submit additional supporting affidavits or other documents, with the leave of the Hearing Panel, which leave may be granted on such terms and conditions as the Hearing Panel considers appropriate and only after the other Party has been given an opportunity to be heard.
- (15) An amended Pleading supersedes the Pleading that it amends.

Form of Pleadings

- (16) All Pleadings must:

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- (a) be in English typewritten or printed double spaced on only one side of a legal size white bond paper;
 - (b) have a caption which sets out the names of the Parties and the docket number (if assigned); and
 - (c) be dated and signed by the Party, a duly authorized agent of the Party or the Party's attorney.

Rule 10 – Motions

- (1) A Party may only apply for any procedural or interlocutory relief or ruling, or for the dismissal of a Complaint or the discontinuance of a proceeding, by way of a motion.
- (2) A motion must state the ruling or relief sought and the grounds upon which it is based, and if necessary must be accompanied by supporting affidavits and other documents.
- (3) All motions must be in writing except motions for continuance made in the presence of the other Party or those made in the course of a hearing.
- (4) All written motions must be filed with the Registrar of the ERC and served on the other Party at least 3 days before the hearing of the motion.
- (5) A written motion must contain a notice setting the hearing of the motion at a specified date and time. However, for good cause shown, the Hearing Panel may hear a motion on shorter notice.
- (6) The Hearing Panel must not act upon any motion without proof of service of notice of the motion on the other Party, except when the Hearing Panel is satisfied that the rights of the other Party are not adversely affected.
- (7) Motions made during hearings may be stated orally upon the record unless the Hearing Panel requires that such motions be reduced to writing, in which case subsections (4), (5) and (6) will apply.
- (8) The other Party may, within 3 days of being served with a motion, file with the Registrar of the ERC, and serve on the Party bringing the motion, an opposition to the motion, accompanied by any necessary supporting affidavits and documents.
- (9) All written motions and oppositions to such motions must:
 - (a) be in English typewritten or printed double spaced on only one side of a legal size white bond paper;
 - (b) have a caption which sets out the names of the Parties and the docket number (if assigned); and
 - (c) be dated and signed by the Party, a duly authorized agent of the Party or the Party's attorney.
- (10) At any time after the filing of a Complaint with the Registrar of the ERC, the Hearing Panel may (after notice and hearing) grant on motion of the Investigating Commissioner the orders sought (or any other orders the Hearing Panel considers appropriate), without prejudice to a final decision after completion of the hearing, should the Hearing Panel find

that the Complaint (together with the supporting affidavits and documents and such additional evidence as may have been presented) substantially supports the making of such orders and should there exist an urgent and compelling reason for the making of such orders.

Rule 11 – Temporary Restraining Order

- (1) Rule 10(5) of the Competition Rules empowers the ERC to make an order requiring a person not to engage in certain conduct if it has reason to believe that the person is likely to engage in that conduct.
- (2) The Investigating Commissioner may only apply for an order as described in subsection (1) by way of a motion. Such a motion must:
 - (a) be in writing;
 - (b) state the order sought and the grounds upon which it is based;
 - (c) be in the form required by rule 10(9);
 - (d) if necessary, be accompanied by supporting affidavits and other documents;
 - (e) contain a notice setting the hearing of the motion at a specified date and time; and
 - (f) be served on the person against whom the order is sought at least 3 days before the hearing of the motion (although, for good cause shown, the motion may be heard on shorter notice).
- (3) The application for a motion under this rule must be heard by:
 - (a) if the motion is filed with the Registrar of the ERC at a time when the person against whom the order is sought is a Party to any proceedings before a Hearing Panel and that motion is relevant to those proceedings – that Hearing Panel; and
 - (b) in any other case – a Hearing Panel constituted by the Chairman to deal with that motion.
- (4) The Hearing Panel must not act upon any motion allowed by this rule without proof of service of notice of the motion on the person against whom the order the subject of the motion is sought.
- (5) The person against whom the order the subject of the motion is sought may, within 3 days of being served with the motion, file with the Registrar of the ERC an opposition to the motion, accompanied by any necessary supporting affidavits and documents. Such an opposition to a motion must be in the form required by rule 10(9).
- (6) The provisions of Parts III and IV of these Complaint Procedure Rules (other than rule 9) apply in relation to a motion under this rule, and any proceedings arising out of such a motion, as if the motion were a Complaint, the person against whom the order the subject of the motion is sought were a Respondent and the opposition to the motion (if any) were an Answer.

Rule 12 – Filing and service

Filing

- (1) The Investigating Commissioner must file a Pleading, written motion or other document with the Registrar of the ERC (together with proof of its service on the Respondent) as soon as practicable after it has been served on the Respondent.
- (2) For the purposes of Part III of these Complaint Procedure Rules, the filing of a Pleading, written motion or other document with the Registrar of the ERC is deemed to be service of that document on the Investigating Commissioner and, as soon as practicable after a Pleading, written motion or other document is so filed, the Registrar of the ERC must provide a copy of it to the Investigating Commissioner.
- (3) Unless the ERC requires otherwise, every Party filing a Pleading, written motion or other document with the Registrar of the ERC must file an original and five conformed copies of that document. Upon the filing of a Complaint, the Registrar of the ERC must assign a docket number to the case.
- (4) The filing of Pleadings, written motions, orders, rulings, decisions, resolutions and other documents is made by:
 - (a) delivering the original to the Registrar of the ERC – in which case the Registrar will endorse on the document the date and hour of filing; or
 - (b) sending the original by registered mail, properly addressed to the Registrar of the ERC and with postage prepaid – in which case the date of the mailing of the document as shown by the post office stamp on the envelope will be considered as the date of filing.
- (5) Acceptance of a Pleading, written motion or other document for filing is not a waiver of a failure to comply with these Complaint Procedure Rules and such failure may be a cause for striking all or any part of a Pleading, written motion or other document.

Service

- (6) Subject to subsection (8), a Pleading, written motion, order, ruling, decision, resolution or other document may be served on a Respondent who is a natural person by:
 - (a) delivering a copy of it to the Respondent or to the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (b) sending a copy of it by registered mail, return receipt requested, properly addressed and with postage prepaid, to the Respondent at the Respondent's residence or principal office or place of business or to the Respondent's attorney of record at that attorney's office (in which case the return post office receipt of delivery will be proof of such service).
- (7) Subject to subsection (8), a Pleading, written motion, order, ruling, decision, resolution or other document may be served on a Respondent who is not a natural person by:
 - (a) delivering a copy of it to any officer of the Respondent, to any agent of the Respondent who is authorized (whether generally or specifically) to receive service

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- of process on behalf of the Respondent, or to the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
- (b) delivering a copy of it to the principal office or place of business of the Respondent or to the office of the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (c) sending a copy of it by registered mail, return receipt requested, properly addressed and with postage prepaid, to the Respondent at the Respondent's principal office or place of business or to the Respondent's attorney of record at that attorney's office (in which case the return post office receipt of delivery will be proof of such service).
- (8) If a Respondent's attorney has filed a written notice of appearance under rule 8(6), service upon that Respondent must be made by service upon that attorney.
- (9) If service of a Pleading, written motion or other document on a Respondent cannot be effected by the Investigating Commissioner under subsection (6), (7) or (8), such service may be effected by delivering the copy to the Registrar of the ERC together with proof of failure of service.
- (10) Notwithstanding subsections (6), (7) and (8), the Chairman or the Hearing Panel (if any) constituted to deal with the relevant Complaint may:
- (a) upon application by the Investigating Commissioner, and for good cause shown, grant leave for the Investigating Commissioner to effect service of a Pleading, written motion or other document on a Respondent in any manner the Chairman or the Hearing Panel (as the case may be) considers appropriate in the circumstances; and
 - (b) upon application by the Registrar of the ERC, and for good cause shown, grant leave for the Registrar to effect service of an order, ruling, decision, resolution or other document on a Respondent in any manner the Chairman or the Hearing Panel (as the case may be) considers appropriate in the circumstances.
- (11) Service of a Pleading, written motion, order, ruling, decision, resolution or other document on a Respondent is complete:
- (a) where it is effected under subsection (6)(a), (7)(a) or (7)(b) – upon actual delivery of the copy of it;
 - (b) where it is effected under subsection (6)(b) or (7)(c) – upon actual receipt of the copy of it by the addressee or five days from the date the addressee received the first notice from the postmaster (whichever is the earlier);
 - (c) where it is effected under subsection (9) – upon actual delivery of the copy of it to the Registrar of the ERC; and
 - (d) where it is effected under subsection (10) – when it is determined to be complete by the Chairman or the Hearing Panel (as the case may be).

Rule 13 – Pre-hearing conference

- (1) Prior to the first hearing of a Hearing Panel in relation to a Complaint, and except where the Hearing Panel otherwise determines, the Registrar of the ERC must set a pre-hearing conference before the Hearing Panel for the purpose of considering ways and means of expediting the proceedings, including:
 - (a) the possibility and advisability of a consented decree, voluntary compliance or desistance on certain terms and conditions;
 - (b) the simplification of the issues;
 - (c) the necessity or desirability of amendments to the Pleadings;
 - (d) the exchange and acceptance of service of exhibits to be offered in evidence;
 - (e) the obtaining of admissions as to, or stipulation of, facts not remaining in dispute or the authenticity of documents which might properly shorten the hearing;
 - (f) the limitation of the number of witnesses; and
 - (g) such other matters as may facilitate the orderly and efficient conduct of the proceedings.
- (2) Prior to such a pre-hearing conference, the Parties or their attorneys must meet to discuss ways and means of expediting the proceedings.
- (3) Both of the Parties and their attorneys must attend the pre-hearing conference unless (in the case of a Party) that Party's attorney is authorized to enter into an agreement on such ways or means of expediting the proceedings as may be considered at the pre-hearing conference.
- (4) At the pre-hearing conference, the Parties must inform each other of the nature and character of the evidence that they propose to offer, indicating the purpose of each item of evidence.
- (5) If, at the pre-hearing conference, the Hearing Panel finds that facts exist upon which a decision on the Pleadings may be made, a decision on the Pleadings may be rendered as justice may require.
- (6) After a pre-hearing conference, the Hearing Panel must make an order that recites the matters taken up in the pre-hearing conference, the action taken in relation to those matters, the amendments allowed to the Pleadings, and the agreements made by the Parties as to any of the matters considered. Such order will limit the issues for hearing to those not disposed of by admissions and agreements of the Parties or their attorneys, and when limited controls the subsequent course of the proceedings unless modified before the hearing to prevent manifest injustice.
- (7) The failure of the Respondent or the Respondent's attorney to attend a pre-hearing conference will be deemed to constitute a waiver by the Respondent of the Respondent's right to appear and participate in the proceedings and to authorize the Hearing Panel, without further notice to the Respondent, to find the facts to be as alleged in the Complaint and to make such orders against the Respondent on the basis of that finding as the Hearing Panel considers to be appropriate.

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- (8) The Respondent may, at any time, make an offer to the Hearing Panel, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. Any such offer, and any or all of the ultimate facts upon which the offer is based, is for settlement purposes only and cannot be used as evidence against the Respondent for any other purpose and does not constitute an admission by the Respondent of any violation of the Competition Rules.

Rule 14 – Hearings

- (1) A hearing before a Hearing Panel must only be conducted after notice of the time, date and place of the hearing has been served on the Respondent, such notice being served on the Respondent at least 5 days before the date of the hearing. Any Party who fails to attend any hearing will be deemed to have waived that Party's presence and the Party present shall be allowed to present evidence ex parte.
- (2) A Hearing Panel may, of its own motion or on motion of any Party, consolidate or hold a joint hearing or proceedings on matters involving common questions of law or fact in which case, if there are two or more Respondents, these Complaint Procedure Rules will apply mutatis mutandis. However, upon motion of a Respondent, a separate hearing may be held on issues peculiar only to that Respondent.
- (3) A Party appearing before a Hearing Panel must endeavour to present its case in concise form, avoiding cumulative and repetitious evidence and arguments to avoid unnecessary and prejudicial delay.
- (4) Hearings must be stenographically recorded by the official stenographer of the ERC and the transcript of stenographic notes will be part of the record and the sole official transcript of the proceedings. Corrections to the transcript may only be made with the approval of the Hearing Panel upon notice and after opportunity for hearing objections. The Respondent is entitled to be provided with a copy of the transcript upon the payment of reasonable charges for the transcription.
- (5) A person must not:
- (a) engage in conduct that results in the obstruction or hindering of a Hearing Panel or a member of a Hearing Panel in the performance or exercise of any of the Hearing Panel's functions and powers; or
 - (b) engage in conduct that results in the disruption of proceedings before a Hearing Panel.
- (6) If the Hearing Panel determines that a person has violated subsection (5), it may make an order requiring the person to pay to the ERC a fine or penalty of not more than P5,000,000.00.

Rule 15 – Provision of information, production of documents and attendance of witnesses

- (1) At the request of a Party, or on its own initiative, the Hearing Panel may exercise such powers as it has to require the provision of information, the production of documents or the

giving of evidence, including its powers under rule 12(1) of the Competition Rules. A request by a Party for the exercise of any such powers must be in writing and must describe the person in respect of whom the powers are sought to be exercised, and the information, documents or evidence the provision, production or giving of which is sought to be required, with sufficient particularity as to enable the Hearing Panel to determine the relevance of the facts intended to be proven thereby.

- (2) Upon motion of a Party or the person in respect of whom the powers referred to in subsection (1) are, or are sought to be, exercised, the Hearing Panel may refuse to exercise, or to persist in exercising, those powers if it is satisfied that to do so would be unreasonable, oppressive or capricious.
- (3) A notice under rule 12(1) of the Competition Rules which is given by the Hearing Panel as described in subsection (1) must be signed by the presiding member of the Hearing Panel.
- (4) Where a notice which is given by the Hearing Panel under rule 12(1) of the Competition Rules is directed at a natural person, it must be served on that person by:
 - (a) delivering it to that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (b) sending it by registered mail, return receipt requested, properly addressed and with postage prepaid, to that person at that person's residence or principal office or place of business (in which case the return post office receipt of delivery will be proof of such service).
- (5) Where a notice which is given by the Hearing Panel under rule 12(1) of the Competition Rules is directed at a person other than a natural person, it must be served on that person by:
 - (a) delivering it to any officer of that person or to any agent of that person who is authorized (whether generally or specifically) to receive service of process on behalf of that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (b) delivering it to the principal office or place of business of that person (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
 - (c) sending it by registered mail, return receipt requested, properly addressed and with postage prepaid, to that person at that person's principal office or place of business (in which case the return post office receipt of delivery will be proof of such service).
- (6) The provision of information or production of documents pursuant to a notice which is given by the Hearing Panel under rule 12(1)(a) or (b) of the Competition Rules must be made under a sworn certificate, in such form as the notice designates, by:
 - (a) if the person to whom the notice is directed is a natural person – that person; or
 - (b) if the person to whom the notice is directed is a person other than a natural person – any person having knowledge of the facts and circumstances relating to the

provision of the information or the production of the documents (as the case may be),

to the effect that all of the information or documents referred to in the notice has been provided or have been produced (as the case may be).

- (7) If a person has a lawful excuse for refusing or failing to comply with a notice which is given by the Hearing Panel under rule 12 of the Competition Rules, that person must give the reasons for such refusal or failure under a sworn certificate by:
- (a) if the person to whom the notice is directed is a natural person – that person; or
 - (b) if the person to whom the notice is directed is a person other than a natural person – any person having knowledge of the facts and circumstances relating to the refusal or failure.

Rule 16 – Evidence

- (1) As far as practicable, the following order must be followed in the presentation of evidence before a Hearing Panel:
- (a) the presentation of evidence must commence with the Investigating Commissioner presenting his evidence;
 - (b) the Respondent must then present its evidence;
 - (c) presentation of further evidence may be allowed at the discretion of the Hearing Panel; and
 - (d) when the presentation of evidence is concluded, the Parties may be required or allowed to submit their respective memoranda in support of their cases.
- (2) A witness whose testimony is to be taken must be sworn or must affirm concerning the matter about which the witness will testify, before the witness's testimony may be taken in evidence. For this purpose, a member of the Hearing Panel must put that person on oath or affirmation.
- (3) Any person who is required to give evidence in proceedings before a Hearing Panel may be accompanied, represented and advised by an attorney.
- (4) If a person who appears before a Hearing Panel:
- (a) refuses or fails to be sworn or affirmed when such is required by the presiding member of the Hearing Panel; or
 - (b) refuses or fails to answer a question when required to do so by the presiding member of the Hearing Panel,
- that person (or that person's attorney) must state for the record the reason for that refusal or failure.
- (5) A person who appears before a Hearing Panel (or that person's attorney) may object on the record to any question, in whole or in part, and must state for the record the reason for that objection.

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- (6) At all hearings, each Party has the right to conduct such cross-examination of witnesses as may be necessary subject to the materiality or relevance of the evidence as well as the competence of the witness to answer the question. The Hearing Panel may also, from time to time, propound such questions as will elicit the full and true disclosure of the facts of the case or clarify certain points at issue.

Rule 17 – Conduct of Proceedings

- (1) A Hearing Panel:
- (a) has control over the entire conduct of all proceedings before it; and
 - (b) may give directions from time to time concerning the conduct of such proceedings.
- (2) Without in any way limiting subsection (1), a Hearing Panel may:
- (a) give directions abridging or extending any time period specified in or prescribed by these Complaint Procedure Rules;
 - (b) give directions about the issues to be addressed before the Hearing Panel;
 - (c) give directions about:
 - (i) the manner in which a matter may be presented, either orally or in writing, to the Hearing Panel; and
 - (ii) the duration of the time in which a person may address the Hearing Panel or give evidence in proceedings before the Hearing Panel;
 - (d) permit a person to amend or withdraw information, documents or evidence provided, produced or given for the purposes of any proceedings;
 - (e) direct that proceedings be suspended for a period determined by the Hearing Panel;
 - (f) direct that proceedings be deferred until a day determined by the Hearing Panel; and
 - (g) direct that a person whose behaviour has a disruptive effect on proceedings be removed or excluded from those proceedings.

Rule 18 - Duties of Hearing Panel

In the performance of its functions and the exercise of its powers, a Hearing Panel:

- (a) is not bound by the rules of evidence except to the extent that section 12 of Book VII of Executive Order No.292 (otherwise known as the Administrative Code of 1987) otherwise requires;
- (b) must consider all relevant information contained in:
 - (i) written or verbal presentations that are made to the Hearing Panel; and
 - (ii) other evidence that is given to the Hearing Panel;
- (c) must act fairly, impartially and reasonably; and

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- (d) must act in accordance with the requirements of due process and, subject to those requirements, with as little formality and technicality, and as much expedition, as a proper consideration of the matters before the Hearing Panel permits.

Rule 19 – Overriding Power

- (1) Subject to the requirements of due process, a Hearing Panel may, in any particular matter, apply such fair and reasonable procedures as shall promote the object of these Complaint Procedure Rules, notwithstanding that such procedures may be at variance with, or not set out in, these Complaint Procedure Rules.
- (2) Without limiting subsection (1) the Hearing Panel may:
- (a) abridge any time period or truncate any preparatory steps specified in or prescribed by these Complaint Procedure Rules where it considers it to be in the public interest to be able to hear a matter, and make any relevant orders, more quickly than would otherwise be permitted under these Complaint Procedure Rules; and
 - (b) at any time during proceedings before it, make an order requiring a person to pay a fine or penalty pursuant to rule 12(12) of the Competition Rules where it considers the violation giving rise to the liability to pay the fine or penalty may hinder or prejudice those proceedings or their outcome.

Rule 20 – Orders

General

- (1) All orders, rulings, decisions and resolutions of a Hearing Panel must be reached with the concurrence of a majority of the members of the Hearing Panel.
- (2) All orders, rulings, decisions and resolutions of a Hearing Panel determining the merits of a matter (including any dissent therefrom by a member of the Hearing Panel) must be in writing, stating clearly and distinctly the facts and the law on which they are based.
- (3) A Hearing Panel must decide each case within 30 days of the completion of the presentation of evidence in that case.
- (4) Each order, ruling, decision and resolution of a Hearing Panel determining the merits of a matter must be filed with the Registrar of the ERC who must, within 3 days of filing, serve a copy of such order, ruling, decision or resolution upon the Respondent.
- (5) All orders, rulings, decisions and resolutions of a Hearing Panel determining the merits of a matter must be published by the Registrar of the ERC in at least one newspaper of general circulation and made available for public inspection.
- (6) The Registrar of the ERC must compile the final decisions, orders, rulings and resolutions of each Hearing Panel and cause them to be printed by the Bureau of Printing.

Rule 21 – Effectivity of decisions

- (1) Except as otherwise provided by law, all decisions, orders, rulings and resolutions of the Hearing Panel will take effect upon the dates specified in them.
- (2) A Hearing Panel may, if it considers it appropriate, stay the operation of any decision, order, ruling or resolution made by it.

Rule 22 – Motion for reopening or reconsideration

- (1) A Party may move for the reopening of any proceedings in relation to a matter at any time after the presentation of evidence in those proceedings has been completed, but before the promulgation by the relevant Hearing Panel of a final decision, order, ruling or resolution which determines the merits of that matter, if, during that period, transactions, events or matters (whether factual or legal) arise which result in a change of situation of a Party. Any such motion must be filed with the Registrar of the ERC prior to the promulgation of the relevant decision, order, ruling or resolution.
- (2) A Party may move for a reconsideration by a Hearing Panel of a final decision, order, ruling or resolution made by that Hearing Panel which determines the merits of a matter. Any such motion must be filed with the Registrar of the ERC within 30 days of the relevant decision, order, ruling or resolution being filed with the Registrar of the ERC. Except with the leave of the Hearing Panel, each Party may only file one motion for reconsideration.
- (3) The motions allowed by this rule must:
 - (a) be in writing;
 - (b) state the ruling or relief sought and the grounds upon which it is based;
 - (c) be in the form required by rule 10(9);
 - (d) if necessary, be accompanied by supporting affidavits and other documents;
 - (e) contain a notice setting the hearing of the motion at a specified date and time; and
 - (f) be served on the other Party at least 10 days before the hearing of the motion (although, for good cause shown, the motion may be heard on shorter notice).
- (4) The Hearing Panel must not act upon any motion allowed by this rule without proof of service of notice of the motion on the other Party.
- (5) The other Party may, within 10 days of being served with the motion, file with the Registrar of the ERC, and serve on the Party bringing the motion, an opposition to the motion, accompanied by any necessary supporting affidavits and documents. Such an opposition to a motion must be in the form required by rule 10(9).

PART IV - MISCELLANEOUS

Rule 23 – Confidentiality

- (1) Subject to subsection (2), hearings before a Hearing Panel must be in public.

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- (2) Where the Hearing Panel determines that it is desirable to do so, it may do all or any of the following:
- (a) direct that a hearing or part of a hearing will take place in private and give directions as to the persons who may be present;
 - (b) give directions prohibiting or restricting the publication of matters raised before, or of evidence given to, the Hearing Panel or of matters contained in documents filed with the Registrar of the ERC;
 - (c) give directions prohibiting or restricting the use or disclosure of, or access to, information provided to the Hearing Panel (whether in evidence or otherwise) or information contained in documents filed with the Registrar of the ERC.
- (3) In determining whether or not to give a direction under subsection (2), the Hearing Panel must have regard to:
- (a) whether information or evidence provided or given, or that may be provided or given, or a matter that has arisen or may arise, during the proceedings is of a confidential nature;
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Hearing Panel exercises its powers under this rule;
 - (c) whether it is in the public interest that the Hearing Panel exercises its powers under this rule; and
 - (d) any other relevant matter.
- (4) Until the ERC has given its final decision on a matter (including any final decision consequent on an application for a reopening of any proceedings in relation to that matter, or for a reconsideration of a final decision, order, ruling or resolution which determines the merits of that matter, under rule 22) the Investigating Commissioner, a member of the Investigatory Unit and any legal adviser retained by the ERC for the purpose of investigating that matter or conducting proceedings in relation to that matter must not make any communication to any Member (other than the Investigating Commissioner) where that communication is relevant to the merits of that matter except where such communication:
- (a) is required or permitted by or under a rule contained in Part III of these Complaint Procedure Rules; or
 - (b) is made in the course of a hearing relating to that matter before a Hearing Panel.
- (5) Until the ERC has given its final decision on a matter (including any final decision consequent on an application for a reopening of any proceedings in relation to that matter, or for a reconsideration of a final decision, order, ruling or resolution which determines the merits of that matter, under rule 22) a Member (other than the Investigating Commissioner) must not make any communication to the Investigating Commissioner, a member of the Investigatory Unit or any legal adviser retained by the ERC for the purpose of investigating that matter or conducting proceedings in relation to that matter where that communication is relevant to the merits of that matter except where such communication:
- (a) is required or permitted by or under a rule contained in Part III of these Complaint Procedure Rules; or

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- (b) is made in the course of a hearing relating to that matter before a Hearing Panel.

Rule 24 – Applicability of the Rules of Court

The provisions of the Rules of Court applicable to proceedings before the Regional Trial Court, which are not inconsistent with these Complaint Procedure Rules, apply in an analagous and suppletory character whenever practicable and convenient, but such provisions are not controlling and, subject to the requirements of due process, the ERC and its delegates may adopt such procedures as they consider appropriate in the circumstances without regard to the rules of procedure and evidence prevailing in courts of law.

Rule 25 - Amendment

Subject to the provisions of any other applicable law:

- (a) these Complaint Procedure Rules may be amended from time to time by the ERC but no such amendment may operate retrospectively; and
- (b) an amendment to these Complaint Procedure Rules takes effect 15 days after its publication in two newspapers of general circulation.

Rule 26 – Interpretation

In these Complaint Procedure Rules, unless the contrary intention appears:

- (a) the singular includes the plural and conversely;
- (b) where a term is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any law or the rules and regulations issued implementing such a law or to any particular provision of a law or of any rules and regulations issued implementing such a law is taken to include:
- (i) any modification, consolidation, amendment, re-enactment, replacement or codification of the law, rules and regulations, or provisions; and
 - (ii) any substituted law, substituted rules and regulations, or substituted provision; and
- (d) mentioning anything after include, includes or including does not limit what else might be included.

Rule 27 – Computation of time

In computing any period of time prescribed or allowed by these Complaint Procedure Rules, or by a notice or order given or made under or as described in these Complaint Procedure Rules, the day of the act or event from which the designated period of time begins to run is to be excluded and the day of performance included provided that, if the last day of the period as so computed falls on a Saturday, a Sunday or a public holiday in Metro Manila, the period will instead be deemed to end on the next day that is not such a day.

Rule 28 – Separability

If, for any reason, any rule or part of a rule of these Complaint Procedure Rules is declared unconstitutional or invalid, those provisions which are not thereby affected will continue to be in full force and effect.

Rule 29 – Application to other proceedings

Except as otherwise determined by the ERC, Part I (other than rule 1) and Parts III and IV of these Complaint Procedure Rules apply mutatis mutandis to:

- (a) the prosecution by the ERC of alleged violations of the EPIRA, the IRR and any rules and regulations promulgated, administered or otherwise enforceable by the ERC; and
- (b) adjudicative proceedings before the ERC pertaining to matters arising under such instruments and the determination of those proceedings,

as if references in these Complaint Procedure Rules to the Competition Rules were instead references to those instruments.

Rule 30 – Effectivity

Subject to the provisions of any other applicable law, these Complaint Procedure Rules take effect 15 days after their publication in two newspapers of general circulation.

Pasig City, [] 2003